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CONSIDERATION OF AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S.J. Res. 154

TO CONSENT TO CERTAIN AMENDMENTS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

MARCH 8, 1990

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CONSIDERATION OF AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920

THURSDAY, MARCH 8, 1990

U.S. Senate,
Committee on Energy and Natural Resources,
Washington, DC.

The committee met, pursuant to notice, at 1:58 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Wendell H. Ford presiding.

OPENING STATEMENT OF HON. WENDELL H. FORD, U.S. SENATOR FROM KENTUCKY

Senator Ford. We will start a minute or two early, which is unusual and very pleasing. Today the Committee on Energy and Natural Resources will receive testimony on Senate Joint Resolution 154 to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act.

I am pleased to invite our witnesses to speak today. Some of you have travelled a long way from Hawaii. I am also glad to have my distinguished colleague and the Chairman of the Senate Select Committee on Indian Affairs, Senator Daniel Inouye, join us.

I would like to begin this afternoon by making a point or two, not being as familiar with this as I should, but from reading, and make those points.

First, the question of whether the Hawaiian Homes Commission Act is meeting its objective of providing land to native Hawaiians and how to better achieve that objective was the focus of a federal state task force report seven years ago. It was also the focus of oversight hearings by this Committee under the guidance of then-member Senator Matsunaga.

More recently, the Indian Affairs Committee held hearings in Hawaii on this question under the leadership of Chairman Inouye.

The task force report and the hearings held by both of these committees have made it clear that much remains to be done to fulfill the intent of the Hawaiian Homes Commission Act. Many recommendations have been made and the state is improving program performance.

However, our focus today, I believe, is quite narrow, and that is whether the six amendments to the HHCA by the State of Hawaii in 1986 and 1987 will contribute to meeting the objectives of the program and shall they receive congressional consent?

Notwithstanding the narrow focus of today's hearings, let me assure each of you of this Committee's commitment to working with the state and with Senators Inouye and Matsunaga in advancing the objectives of the Hawaiian Homes Commission Act.

Although the trust responsibility on this Act has been transferred to the State of Hawaii, the Federal Government continues to have a responsibility for the welfare of all of our nation's people.

Finally, I say to the witnesses today, I am concerned that the general lease program proposed under one of the amendments before us today could result in a substantial number of leases coming under the control of currently ineligible, nonnative interests. This could lead to the alienation of the homelands from the intended beneficiaries.

I hope that we can clarify these concerns today in the testimony, and in any case, this Committee will seek a consensus from all those interested in this program and hopefully, a final judgment can be made very quickly. So, I am very pleased to have my good friend, Senator Inouye here, and Senator, you may proceed with your statement.

[The text of S.J. Res. 154 follows:]

II

101ST CONGRESS
1ST SESSION

S. J. RES. 154

To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

IN THE SENATE OF THE UNITED STATES

JUNE 8 (legislative day, JANUARY 3), 1989

Mr. JOHNSTON (by request) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

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JOINT RESOLUTION

To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, as required by section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States hereby consents to the following amendments to the Hawaiian Homes Commission Act, 1920, as amended, adopted by the State of Hawaii in the manner required for State legislation: Act 16, Act 75, Act 84, and Act 249 of the Session Laws of Hawaii, 1986; and Act 36 of the Session Laws of Hawaii, 1987.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Mr. Chairman, I thank you very much for this opportunity to present testimony on Senate Joint Resolution 154, a resolution to provide for congressional approval of amendments to the Hawaiian Homes Commission Act of 1920 as enacted by the legislature of the State of Hawaii.

Mr. Chairman, in August of last year, the Select Committee on Indian Affairs held 5 days of hearings on the Hawaiian Homes Commission Act. On each of the islands where Hawaiian homelands are located, the Committee received over 60 hours of testimony, primarily from native Hawaiian beneficiaries of the Act who are either currently living on the land or who have applications to receive homestead lots on the waiting list, and as you have alluded, at present there are over 19,500 applications for homestead lots pending on that waiting list.

Some of those on the waiting list testified that they had been on the waiting list for over 30 years and some descendants of those on the waiting list testified that their parents and grandparents had died while they were waiting to receive an assignment of homestead land.

The primary obstacle to these beneficiaries receiving land seems to be the lack of infrastructure, roads, access to water and sanitation systems, electricity. These remain to be built before the lands can be occupied.

This situation should probably not surprise us, for when the Hawaiian Homes Commission Act was enacted and when it was subsequently incorporated into the act which granted the State of Hawaii's admission into the union of the United States, our colleagues who had preceded us were assured that the lands that were set aside under the Hawaiian Homes Commission Act for the benefit of native Hawaiians would be self-sustaining and that no federal appropriations would be required to support their developmental habitation.

As a result, with the exception of a small amount of money that was secured for housing, over the past two years there have been no federal funds appropriated to support the development of the homelands in the 70 years since the passage of this Act.

Over the years, the Department of Hawaiian Homelands, the state agency charged with the responsibility of administering this program, has tried to fashion a policy and programs that would provide the income necessary to make the land suitable for settlement. They have implemented a general leasing program that allows nonbeneficiaries of the Act to lease homelands and that program has provided, up until recently, the primary source of income to the homelands program.

Recognizing that this income would never be sufficient to support the development needs of the homelands, in recent years the state legislature of Hawaii has appropriated funds for the homelands. Despite these efforts, I am advised that there is a continuing need to develop new mechanisms to bring revenues into the homelands program.

On that basis, I support the amendments proposed by the Hawaii state legislature and would commend them to your consideration. However, after reviewing Act 75 of the legislature, I must admit I have some concerns, as you have indicated, sir, and those concerns are outlined in the prepared statement that I wish to submit for the record.

Senator **Ford**. Without objection, it will be included.

Senator **Inouye**. I am confident that these areas of concern can be addressed by the Hawaii state legislature and by this Congress. I look forward to working with the members of this committee to insure that the lands which have been set aside for the benefit of native Hawaiians are always protected and are held for them in perpetuity. I know that the members of this committee share my commitment to assuring that the trust responsibilities and legal duties of the United States and the State of Hawaii to the beneficiaries of the commission are fulfilled and upheld.

I thank you very much, sir.

[The prepared statement of Senator Inouye follows:]

STATEMENT OF SENATOR DANIEL K. INOUYE

ON

SENATE JOINT RESOLUTION 154

AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920

CHAIRMAN FORD, AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, I WANT TO THANK YOU FOR THE OPPORTUNITY TO PRESENT TESTIMONY ON SENATE JOINT RESOLUTION 154, PROVIDING FOR CONGRESSIONAL APPROVAL OF AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920 AS ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII.

IN GENERAL, I SUPPORT THE AMENDMENTS PROPOSED BY THE HAWAII STATE LEGISLATURE AND WOULD COMMEND THEM TO YOUR CONSIDERATION. HOWEVER, I FEEL COMPELLED TO EXPRESS MY CONCERNS REGARDING ACT 75, ENACTED BY THE HAWAII STATE LEGISLATURE IN 1986. AS I READ ACT 75, IT MAY WELL ALLOW FOR THE PERMANENT ALIENATION OF LANDS THAT WERE INTENDED UNDER THE HAWAIIAN HOMES COMMISSION ACT TO REMAIN WITHIN THE CORPUS OF THE HAWAIIAN HOMELANDS TRUST. THERE ARE SEVERAL WAYS IN WHICH THIS PERMANENT ALIENATION COULD TAKE PLACE.

FIRST, UNDER SECTION 503 OF ACT 75, SUBSECTION F PROVIDES:

"LEASES UNDER THIS TITLE SHALL CONTAIN CONDITIONS PERMITTING THE HOMESTEAD GENERAL LESSEE TO SUBLET OR PART WITH THE POSSESSION OF THE WHOLE OR ANY PART OF THE PREMISES AND TO SELL, ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF, ANY INTEREST IN THE HOMESTEAD GENERAL LEASE OR ANY IMPROVEMENTS ERECTED ON THE PREMISES WITH THE PRIOR WRITTEN CONSENT OF THE DEPARTMENT.

SECONDLY, SECTION 508 OF THE ACT PROVIDES THAT TITLE TO A HOMESTEAD GENERAL LEASE AND TO THE IMPROVEMENTS UPON THE PREMISES, MAY BE TRANSFERRED BY ASSIGNMENT, SUBLEASE, TESTAMENTARY BEQUEST OR DEVISE, INTESTATE SUCCESSION, OR OTHERWISE BY OPERATION OF LAW. INDIVIDUAL, PARTNERSHIP, CORPORATIONS, OR AGENCIES OF GOVERNMENT, DISQUALIFIED UNDER THE ACT TO TAKE A LEASE FOR HOMESTEAD PURPOSES, MAY SUCCEED AND TAKE TITLE TO A HOMESTEAD GENERAL LEASE AND THE IMPROVEMENTS ON THE PREMISES BY TRANSFER OR BY PURCHASING AT OR AFTER A SALE UPON A FORECLOSURE OF A MORTAGAGE PERMITTED UNDER THIS TITLE.

WITHIN A TEN YEAR PERIOD FOLLOWING THE INITIAL TERM OF THE HOMESTEAD GENERAL LEASE, THE DEPARTMENT OF HAWAIIAN HOMELANDS HAS THE FIRST OPTION TO PURCHASE THE LEASE AND/OR IMPROVEMENTS ON THE LAND. UNDER THE TERMS OF ACT 75, THIS FIRST

OPTION TO PURCHASE THE LEASE AND ANY IMPROVEMENTS ON THE LAND MAY BE A TERM OF THE LEASE.

NOW, TAKING ALL OF THESE PROVISIONS TOGETHER, THIS IS MY CONCERN. A NATIVE HAWAIIAN BENEFICIARY OF THE ACT RECEIVES A HOMESTEAD GENERAL LEASE, AND SELLS HIS INTEREST IN THE LEASE TO A LARGE DEVELOPER. THE DEVELOPER TAKES THIS LEASE, OR POSSIBLY CONSOLIDATES IT WITH LAND THAT HE HAS BOUGHT FROM OTHER HOMESTEAD GENERAL LESSEES, AND BUILDS A MULTI-MILLION DOLLAR DEVELOPMENT ON THE LAND. YEARS PASS, AND WHEN IT COMES TIME FOR THE DEPARTMENT TO EXERCISE ITS OPTION TO PURCHASE THE LEASE, UNDER THE TERMS OF THE LEASE, THE DEPARTMENT ALSO HAS TO PAY THE APPRAISED VALUE FOR THE IMPROVEMENTS THE DEVELOPER HAS MADE TO THE LAND.

SUPPOSE, AND I DON'T THINK THAT THIS IS AN UNLIKELY SITUATION THAT I POSE, THAT THE DEPARTMENT DOESN'T HAVE THE MILLIONS OF DOLLARS IT WOULD TAKE TO PURCHASE THE IMPROVEMENTS ON THE LAND. BY THE TERMS OF THE LEASE, THE LEASE DOES NOT EXPIRE UNTIL THE DEPARTMENT EXERCISES ITS OPTION, AND THE DEPARTMENT DOES NOT HAVE THE MONEY TO EXERCISE ITS OPTION. ACT 75 DOES NOT ADDRESS THE CONDITIONS OF TERMINATION OF A LEASE IN THIS INSTANCE. IN FACT, WHILE THERE ARE SEVERAL SECTIONS OF ACT 75

WHICH ADDRESS ACTIONS OF THE DEPARTMENT, THE ACT IS SILENT WITH REGARD TO WHAT WOULD HAPPEN IN ANY OF THE SITUATIONS POSITED, SHOULD THE DEPARTMENT FAIL TO EXERCISE ITS OPTIONS OR BE INCAPABLE OF EXERCISING ITS OPTIONS. IS THE LEASE EXTENDED INDEFINITELY, AND FOR ALL PRACTICAL PURPOSES, THE LAND SUBJECT TO THE LEASE PERMANENTLY ALIENATED? I THINK WE NEED TO HAVE ANSWERS TO THE QUESTIONS THAT ARISE FROM THE ACT'S SILENCE ON THESE ISSUES.

A SECOND BUT NO LESS IMPORTANT CONCERN THAT I HAVE IS THAT LEASES CAN BE MADE AVAILABLE UNDER THE TERMS OF ACT 75 TO PEOPLE, OR INDEED EVEN CORPORATIONS UNDER THE SECTION I CITED PREVIOUSLY [SECTION 508], WHO ARE NOT BENEFICIARIES OF THE HAWAIIAN HOMES COMMISSION ACT. WITH THE OVER 19,000 APPLICATIONS OF BENEFICIARIES THAT ARE NOW ON THE DEPARTMENT'S WAITING LIST, I DO NOT SEE HOW THIS RESULT CAN BE JUSTIFIED.

WE HAVE SEEN THAT THE LEASE CAN BE SOLD OR TRANSFERRED, DISPOSED OF OR DEVISED, INHERITED OR OTHERWISE LOST BY OPERATION OF LAW. IT CAN BE RECEIVED BY INDIVIDUALS, PARTNERSHIPS, CORPORATIONS, OR AGENCIES OF GOVERNMENT THAT ARE DISQUALIFIED UNDER THE ACT TO TAKE A LEASE FOR HOMESTEAD PURPOSES. THERE IS ONE AND ONLY ONE ACTION THAT IS NEEDED TO

SECURE THE RESULT, AND THAT IS THE CONSENT OF THE DEPARTMENT OF HAWAIIAN HOMELANDS.

WHILE I WOULD BE THE FIRST TO ACKNOWLEDGE THE CAPABLE LEADERSHIP OF THE DEPARTMENT, AS TRUSTEES FOR THESE LANDS, I BELIEVE THAT THE STATE OF HAWAII AND THE UNITED STATES MUST LOOK INTO THE FUTURE AND PROVIDE SAFEGUARDS TO ASSURE THAT THE CORPUS OF THE TRUST -- THE HAWAIIAN HOMELANDS -- ARE ALWAYS AVAILABLE FOR THOSE FOR WHOM THE LANDS WERE SET ASIDE. FURTHER, THE GOVERNMENTS OF THE STATE OF HAWAII AND THE UNITED STATES MAY BE EXPOSING THEMSELVES TO LIABILITY FOR BREACH OF TRUST CLAIMS IF THESE LANDS ARE EVER EFFECTIVELY LOST TO THE HOMELANDS TRUST. I DON'T KNOW HOW WE CAN UPHOLD OUR TRUST DUTIES OR FULFILL OUR TRUST RESPONSIBILITIES IF WE FAIL TO PROVIDE FOR THE MEANS OF ASSURING THAT ADMINISTRATIVE ACTION OR INACTION DOES NOT RESULT IN THE LOSS OF LAND FROM THE TRUST.

I AM CONFIDENT THAT THESE ISSUES WERE CONTEMPLATED IN THE HAWAII STATE LEGISLATURE, AND THAT THE CONCERNS WHICH I HAVE RAISED CAN BE ADDRESSED. I LOOK FORWARD TO WORKING WITH THE MEMBERS OF THE ENERGY COMMITTEE TO ASSURE THAT THE LANDS WHICH HAVE BEEN SET ASIDE FOR THE BENEFIT OF NATIVE HAWAIIANS ARE ALWAYS PROTECTED, AND THAT THE LEGAL RESPONSIBILITIES OF

THE UNITED STATES AND THOSE OF THE STATE OF HAWAII WHICH ARE OWED TO THE BENEFICIARIES OF THE HAWAIIAN HOMES COMMISSION ACT ARE FULFILLED.

Senator **Ford**. Thank you, Senator. I have one question that I think I need your thought on, so it might be included in the record.

I understand that during your hearings last summer, the suggestion was made to repeal the requirement in section 4 of the Statehood Act for congressional consent to certain amendments to the Homes Commission Act. The Department of the Interior specifically proposed such a repeal in its communications to the Senate on this joint resolution. Personally, after reading it, I have some reservations that such an action would not serve the interest of the native Hawaiian community. But, I certainly would honor and respect your views on that, Senator.

Senator **Inouye**. Mr. Chairman, most respectfully, I am absolutely opposed to the repeal of this section, I believe it is section 4.

That section was specifically placed in the Hawaii Statehood Act, the Admissions Act, to indicate to one and all that, notwithstanding the fact that the responsibility of administering these lands would turn over to the State of Hawaii, the Federal Government indicated by that action that this government of the United States recognizes and will continue to exercise its trust responsibilities to the native Hawaiians. Once that consent requirement is taken away, then one can argue that this trust responsibility or fiduciary duty, which I believe exists at this moment, would be wiped away, that our hands are no longer tied to the native Hawaiians.

I would hope that we would never take an action to repeal this section because, as we the people of the United States have this fiduciary relationship with native Americans, the American Indians, I believe that we the people of the United States, through our government, has a fiduciary or trust responsibility or relationship with native Hawaiians.

Senator **Ford**. Senator, that is the way I read it and I am glad that you have confirmed my thinking. I am glad we put that in the record so that we would understand it better. I have no further questions, Senator.

If you have nothing further, why we will get on to the other witnesses.

Senator **Inouye**. I thank you very much, sir.

Senator **Ford**. Thank you, my friend.

We will have a statement entered into the record by Senator Matsunaga.

[The prepared statement of Senator Matsunaga follows:]

STATEMENT OF U. S. SENATOR SPARK MATSUNAGA ON AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT OF 1920

Before the U. S. Senate Committee on Energy and Natural Resources

Thursday, March 8, 1990

Mr. Chairman, at the outset, I wish to thank you and the members of the Committee on Energy and Natural Resources for scheduling these timely hearings on proposed amendments to the Hawaiian Homes Commission Act adopted by the Hawaii State Legislature in 1987.

As a cosponsor of S. J. Res. 154, which the Chairman introduced, I fully support approval of the amendments, and hope that prompt action also will be taken by the full Senate to enact the Resolution of approval.

The proposed amendments would make it easier for the Department of Hawaiian Home Lands, which administers the Hawaiian Homes Commission Act, to obtain federal and private loans for the development of housing and related roads, sewers, development of water resources, and other needed improvements. In addition, the proposed amendments would give the Department of Hawaiian Home Lands authority to enter into agreements for the development of homesteads or for income generating purposes. Presently, the Department may negotiate such agreements, but it must seek approval of the Governor and State Legislature in order to carry them out.

Mr. Chairman, many changes have occurred in Hawaii since the enactment of the Hawaiian Homes Commission Act. Envisioned by its author, Prince Jonah Kuhio Kalanianaole, as a means of restoring a measure of sovereignty to Native Hawaiians disenfranchised by the overthrow of the Hawaiian monarchy in 1893, the Act was promoted in Congress as a means of "rehabilitating" Native Hawaiians by providing them with land for farming and ranching. From the perspective of 1989, it is amazing to note that with the exception of Prince Kuhio, the non-voting delegate to Congress from the Territory of Hawaii, Native Hawaiians themselves did not play a major role in the enactment of the bill. Congress did, however, bow to other major landowners in Hawaii, by excluding some types of land from inclusion in the homestead package and by limiting eligibility for homestead leases to Hawaiians of one-half native blood or more. Only about 200,000 acres were made available for homesteads and ranches -- not even enough for the number of eligible beneficiaries in 1920. Moreover, having passed the Act, Congress failed to provide funds needed for the development of water resources, roads, sewers and other needed improvements.

With the coming of statehood in 1959, day-to-day administration of the Hawaiian Homes Commission Act was turned over to the State of Hawaii. However, the federal government retained oversight authority. The Secretary of the Interior is required to approve major land transfers undertaken by the Hawaiian Homes Commission, and Congress must approve major amendments to the Act proposed by the Hawaii State Legislature. In the early 1980's, a joint federal-state task force reviewed the administration of the Hawaiian Homes Commission Act, recommending a number of changes to speed the placement of beneficiaries on homesteads and to correct deficiencies. Last year, the Senate

Select Committee on Indian Affairs held a well-attended oversight hearing in Hawaii and it is my understanding that legislation to implement some of the changes recommended is in preparation. Specifically, my colleague from Hawaii, Senator Inouye, is working with the Hawaii State Legislature to develop a bill which will clarify the special relationship which exists between the federal government and the beneficiaries of the Hawaiian Homes Commission Act. It is my hope that hearings on this legislation can be held by Congress later this year, and that the Committee on Energy and Natural Resources will participate in this and future efforts to update the Hawaiian Homes Commission Act.

Given adequate resources, the Hawaiian Homes Commission could be a truly powerful housing and land development agency, run by Native Hawaiians for Native Hawaiians. It could build more varied types of housing for Hawaiians of all ages and incomes, including congregate housing for elderly Hawaiians; condominiums, rental apartments and townhomes for urban Hawaiians; and single family homes. It could develop rural property for ranchers and farmers as well. I believe that the time has come for us to reexamine Prince Kuhio's vision, with a view toward providing innovative solutions to the 21st Century housing needs of Native Hawaiians.

Mr. Chairman, again, thank you for scheduling these timely hearings on S. J. Res. 154, and for your interest in and commitment to the welfare of Native Hawaiians.

Senator **Ford**. We will have a panel of three witnesses now. Mr. Glidden, Ms. Drake and Mr. Alexander. If those three would come to the table, we will be delighted to hear your testimony.

Are we missing anybody? Oh, we are fine, we are going to fill up the chairs. We will let Mr. Glidden go first, and then Ms. Drake and then Mr. Alexander.

Mr. Glidden.

STATEMENT OF TIMOTHY W. GLIDDEN, COUNSELOR TO THE SECRETARY OF THE INTERIOR, ACCOMPANIED BY RUTH VAN CLEVE, OFFICE OF THE SOLICITOR

Mr. **Glidden**. Thank you, Mr. Chairman. I have a seven page statement which I will try to quickly read, if you would like, or I can summarize.

Senator **Ford**. Whatever you prefer.

Mr. **Glidden**. All right, sir.

The Department of the Interior welcomes this opportunity to respond to the committee's invitation to testify on S.J. Res. 154, a joint resolution proposed by the administration to provide the consent of the United States to amendments enacted by the State of Hawaii in 1986 and 1987 to the Hawaiian Homes Commission Act. I am testifying not only in my capacity as Counselor to the Secretary of the Interior, but also particularly in light of my formal appointment as the Secretary's Designated Officer for the Hawaiian Homes Commission Act.

I should like, first, to provide some background concerning the Hawaiian Homes Commission Act and the responsibilities of the Department of the Interior with respect to it. As I shall explain, we believe that the current status of the Hawaiian Homes Commission Act makes the act in unique United States statutory law and that the legislation before you is necessary because of a unique statutory requirement.

Secondly, I will review the most recent action of the Congress on this subject, which gave rise to Federal consent legislation in 1986.

Finally, I will turn to the joint resolution now before you on which we urge your favorable action. I will skip the part on the background since I believe Senator Inouye has covered that very well.

I will pick it up on page two here. In the Hawaiian Statehood Act enacted in 1959, the Congress required in section 4 that the Hawaiian Homes Commission Act be adopted as a provision of the constitution of said State of Hawaii, and it was so adopted, and further, section 4 described the Homes Commission Act as a compact with the United States.

The Statehood Act further provided that following Hawaii's admission, the Homes Commission Act could be amended in Hawaii, either through usual State legislation or by means of an amendment to the State constitution. But any such amendment is, under the terms of section 4, "subject to the consent of the United States", unless it relates to administration or to the powers and duties of State officers or unless it increases benefits to lessees of Hawaiian homelands. It is this consent provision that gives rise to the joint resolution now before the committee.

In the early 1980s, because of widely held misgivings concerning the slow pace at which homestead leases were being awarded to native Hawaiians, the Governor of Hawaii and the Secretary of the Interior appointed a task force to make recommendations to both of them on ways to better effectuate the purposes of the Hawaiian Homes Commission Act.

The task force submitted its recommendations on August 15, 1983. Among the recommendations made was the recommendation that the Department of the Interior serve as the lead Federal agency on matters of Federal concern that relate to the Homes Commission Act, and that is our role here today.

Another recommendation was that the Secretary of the Interior appoint a person within the Interior Department to serve as the Secretary's Designated Officer for purposes of the Hawaiian Homes Commission Act, so as to have an official and known point of contact on Homes Commission matters. I have been so designated.

Yet another recommendation was that an effort be made to comply with the consent requirements of the Statehood Act, because at the time of the task force deliberations, no effort had ever been made to seek the consent of the United States to any State-enacted amendments to the Hawaiian Homes Commission Act.

Turning then to recent congressional action on this subject, in 1986 Public Law 99-557 was enacted at the urging of the Interior Department. That law provided the consent of the United States to all amendments to the Homes Commission Act enacted in Hawaii from the date of Hawaii's admission to the union in August of 1959, through June 30, 1985, save one, which I will discuss shortly.

The task force to which I have referred took note of the fact that many amendments to the Homes Commission Act had been enacted in Hawaii from the time of statehood onward, but that none had been forwarded to the Congress to meet the consent requirement of the Statehood Act.

The task force recommended that as to such amendments, the consent of the United States be obtained as soon as possible so as to eliminate doubt as to the status of such amendments, and thus as to the validity of particular provisions of the Homes Commission Act.

Public Law 99-557 was the result. That legislation took the form of providing consent to all amendments with the one exception, enacted over the period 1959 through June 30, 1985, so as to place the Act on as firm a foundation as possible as of that date.

One Hawaii amendment which had been enacted in 1981 was excluded from the consent provided by Public Law 99-557 because it was not consistent with another later enacted amendment. That 1981 law has since been repealed by the Hawaiian legislature so that issue is moot, in my opinion.

As of June 30, 1985, therefore, the consent of the United States was provided to all amendments that required it and the Hawaiian Homes Commission Act had achieved the firm status that the task force and others sought.

Turning now to S.J. Res. 154, this legislation provides the consent of the United States to six amendments to the Homes Commission Act enacted in Hawaii in 1986 and 1987. There are no amendments to the Act enacted in the State in 1988.

Our letter submitting the proposed legislation to the Congress, S.J. Res. 154, provides information as to substance of each of those six amendments. All were free of controversy in Hawaii.

As our explanatory letter states, it may be that some of the six do not require the consent of Congress, if the consent requirement of the Statehood Act is not strictly construed. But we believe a cautious approach is proper to eliminate any doubt as to the validity of any particular amendment.

Our proposed legislation thus provides for consent to all amendments enacted since 1985 that might arguably require it. That would be up through 1988.

The Interior Department's position as to these six amendments is, as it was with the previous consent legislation, one of deference to the lawmakers of Hawaii. We believe they are in the position to judge most wisely the merits of amendments to the Homes Commission Act.

We have, however, examined the amendments and are prepared to speak to them should you have questions about them. In addition, the chairman of the Hawaiian Homes Commission is present in this hearing, sitting next to me, Mrs. Drake, with others of her staff also present. They too will speak to the substance of these amendments, should you have questions concerning them.

Because no amendments to the Hawaiian Homes Commission Act were enacted in Hawaii in 1988, enactment of S.J. Res. 154 will provide consent to all amendments as of January 1, 1989. We understand that additional amendments are now being considered by the Hawaii legislature in its current session.

We may thus anticipate that legislation providing the consent of the United States to amendments enacted by the State in 1990, as well as those enacted in 1989—and I might add here that I think three amendments were enacted in 1989—will be before the next session of the Congress.

Following the enactment of Public Law 99-557 in 1986 the Chairman of this Committee asked the Secretary of the Interior to focus, in submitting later consent legislation, on particular cited amendments as our proposed legislation, now S.J. Res. 154, does.

He also asked that we provide pertinent legislative materials from Hawaii, including reports from committees of the State legislature, on amendments for which consent from the U.S. Congress is sought. We have obtained all such legislative materials from Hawaii and have provided them to the staff of this committee.

An examination of them reveals that all six amendments were free from controversy in Hawaii. We believe they should be similarly free from controversy in the United States Congress.

Finally, I would speak to the paragraph of the last page of the Interior Department's letter—which Senator Inouye brought up in his statement—of May 31, 1989, to the President of the Senate, transmitting a proposed joint resolution that has become S.J. Res. 154.

That paragraph states that the Department expects to transmit to the Congress proposed draft legislation to repeal the consent requirement for amendments to the Hawaiian Homes Commission Act. Upon reconsideration, the administration has concluded that it will not submit legislation on that subject.

That concludes my prepared testimony. I will be happy to respond to any questions you might have.

In conclusion, I might add that in the 23 years that I worked as a member of various staffs up here on the Hill, I developed what I call "Glidden's Law", which is that every draft of every piece of legislation has a mistake in it.

And last night I was reading over this legislation, and I find that this piece of legislation has a mistake in it and I wanted to point that out to the Committee at this time.

This bill which is supposed to consent to six different acts only consents to five different acts. Somebody seems to have deleted "Act 85" on page one, line nine, after the words, "Act 84". You should have "Act 85," inserted before the "and" there. I think that was a typographical, clerical deletion.

I find that these mistakes are much easier to correct before you mark up than after they become law. I will be sending legislation up to this Committee to correct a mistake that I myself made back in 1984 in a similar piece of legislation.

And so I thought I should bring that out at this point.

Senator **Ford**. I appreciate your being honest. We will move forward from there.

Ms. Drake, I think we will go through the panel and then we will have questions that would be appropriate maybe.

STATEMENT OF HOALIKU L. DRAKE, CHAIRMAN, HAWAIIAN HOMES COMMISSION

Ms. **Drake**. Senator Ford, Senator Inouye, Keike O Ka aiana and members of the Senate Committee on Energy and Natural Resources, we appreciate this opportunity to testify in support of Senate Joint Resolution 154.

I am Hoaliku L. Drake, Chairman of the Hawaiian Homes Commission and the Department of Hawaiian Home Lands.

I will do a summary of my testimony.

Senator **Ford**. Your total statement will be included in the record.

Ms. **Drake**. The purpose of Senate Joint Resolution 154 is to provide for the consent of the United States to six amendments to the Hawaiian Homes Commission Act 1920 as amended, made in 1986 and 1987, through the enactment of laws by the State of Hawaii.

The Admission Act requires that amendments to or repeal of provisions of the Hawaiian Homes Commission Act be made only with the consent of the United States, except for amendments that relate to administration of the Hawaiian Homes Commission Act or that increase benefits to lessees of Hawaiian Home Lands.

The Admission Act specifically provides that qualifications of lessees shall not be changed except with the consent of the United States.

The testimony of the Department of Hawaiian Home Lands provides background data, information about the Department's programs and activities, a discussion of certain issues that have been raised about the subject matter of the resolution, and justification for approval of the resolution.

The testimony is in two parts. Part I provides background information about the Hawaiian Homes Commission Act and about the Department of Hawaiian Home Lands. Information about the homesteading program and other activities is provided in this part.

Part II of the testimony covers the amendments to the Hawaiian Homes Commission Act made by the State of Hawaii in 1986 and 1987. As no amendments to the Hawaiian Commission Act were enacted in Hawaii in 1988, Senate Joint Resolution 154 will provide consent to all amendments as of January 1, 1989.

The department supports the intent to obtain consent to the amendments. For this reason, stated in the testimony, the Department of Hawaiian Home Lands respectfully recommends your favorable consideration of Senate Joint Resolution 154.

We appreciate very much the opportunity to present our comments and would be pleased to respond to any questions that the Chairman and members of the Committee may have.

[The prepared statement of Ms. Drake follows:]

JOHN WAIHEE
GOVERNOR
STATE OF HAWAII

HOALIKU L. DRAKE
[redacted]
CHAIRMAN
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY

ON SENATE JOINT RESOLUTION 154

BEFORE THE SENATE COMMITTEE

ON ENERGY AND NATURAL RESOURCES

THE HONORABLE J. BENNETT JOHNSON
Chairman

BY

Hoaliku L. Drake, Chairman
Hawaiian Homes Commission
State of Hawaii

Washington, D.C.

March 8, 1990

SUMMARY OF TESTIMONY

The purpose of Senate Joint Resolution 154 is to provide for the consent of the United States to six amendments to the Hawaiian Homes Commission Act, 1920, as amended, made in 1986 and 1987 through the enactment of laws by the State of Hawaii. The Admission Act requires that amendments to or repeal of provisions of the Hawaiian Homes Commission Act be made only with the consent of the United States, except for amendments that relate to administration of the Hawaiian Homes Commission Act or that increase benefits to lessees of Hawaiian home lands. The Admission Act specifically provides that qualifications of lessees shall not be changed except with the consent of the United States.

The testimony of the Department of Hawaiian Home Lands provides background data, information about the Department's programs and activities, a discussion of certain issues that have been raised about the subject matter of the Resolution, and justification for approval of the Resolution. The testimony is in two parts.

> Part I provides background information about the Hawaiian Homes Commission Act and about the Department of Hawaiian Home Lands. Information about the homesteading program and other activities is provided in this part.

Part II of the testimony covers the amendments to the Hawaiian Homes Commission Act made by the State of Hawaii in 1986 and 1987. As no amendments to the Hawaiian Homes Commission Act were enacted in Hawaii in 1988, Senate Joint Resolution 154 will provide consent to all amendments as of January 1, 1989.

The Department supports the intent to obtain consent to the amendments. For the reasons stated in the testimony, the Department of Hawaiian Home Lands respectfully recommends your favorable consideration of Senate Joint Resolution 154.

We appreciate very much the opportunity to present our comments and would be pleased to respond to any questions that the Chairman and members of the Committee may have.

Mr. Chairman and Members of the Senate Committee on Energy and Natural Resources, we appreciate this opportunity to testify in support of Senate Joint Resolution 154.

I am Hoaliku L. Drake, Chairman of the Hawaiian Homes Commission and the Department of Hawaiian Home Lands.

The purpose of House Joint Resolution 154 is to provide congressional consent to amendments to the Hawaiian Homes Commission Act, 1920, as amended, (hereinafter "HHCA"), made by the State of Hawaii in 1986 and 1987.

Part I. Background on the HHCA and the Department of Hawaiian Home Lands

The HHCA was passed by the U.S. Congress and signed into law by President Warren G. Harding on July 9, 1921. The HHCA set aside certain lands of the Territory of Hawaii as Hawaiian home lands, and established a homesteading program to provide for the rehabilitation of native Hawaiians, that is, persons of at least 50% Hawaiian blood.

The HHCA was enacted to address concerns over the declining number of full-blooded Hawaiians in the Territory and their economic plight. Population data showed the number of full-blooded Hawaiians had decreased from an estimated 142,650 in 1826 to 22,600 in 1919. Many Hawaiians were jobless, homeless, and driven to live in or near urban areas to seek cheap shelter.

When Hawaii became a State in 1959, the Admission Act (Act of March 18, 1959, Pub L 86-3, 73 Stat 4), provided for the following:

(1) Transferred title to all Hawaiian home lands to the State. (Section 5)

(2) Required that, as a compact with the United States relating to the management and disposition of Hawaiian home lands, the HHCA be adopted as a provision of the Hawaii State Constitution. (Section 4)

(3) Required that amendments to or repeal of provisions of the HHCA be made only with the consent of the United States, except for amendments to provisions that relate to administration of the HHCA or that increase benefits to lessees of the HHCA. The Admission Act specifically provided that qualifications of lessees shall not be changed except with the consent of the United States. (Section 4)

The HHCA is administered by the Department of Hawaiian Home Lands (Department), one of 19 principal departments of the State of Hawaii. The Department is headed by an executive board known as the Hawaiian Homes Commission, whose nine members are appointed by the Governor with the advice and consent of the State Senate. The Chairman of the Commission serves as the full-time administrator of the Department.

Pursuant to provisions of the HHCA, the Department provides direct benefits to native Hawaiians in the form of

99-year homestead leases at an annual rental of $1. The leases are for residential, agricultural or pastoral purposes. Aquacultural leases are also authorized, but none have been awarded to date. The intent of the homesteading program is to increase the economic self-sufficiency of native Hawaiians through the provision of land.

Other benefits provided by the HHCA include financial assistance through direct loans or loan guarantees for home construction, home replacement or repair, and for the development of farms and ranches; through the provision of technical assistance to farmers and ranchers; and through the operation of water systems.

In addition to administering the homesteading program, the Department is also authorized to lease land and issue revocable permits, licenses and rights-of-entry for lands not suitable for or not presently in homestead use. Revenues from lands in commercial, industrial and other income-producing uses support homestead development activities.

The Native Hawaiian Rehabilitation Fund, established by amendments to the Hawaii Constitution in 1978 and incorporated in the HHCA, enables the Department to fund programs and projects for the educational, economic, political, social and cultural advancement of native Hawaiians. This fund is derived from 30% of the State's annual revenues from sugarcane leases and water licenses.

Hawaiian home lands are located on the islands of Oahu, Kauai, Molokai, Maui, and Hawaii, with a total estimated acreage of 187,413. Of that total, 32,713 acres have been placed in homestead uses for residential, agricultural, or pastoral (ranching) purposes as of December 31, 1989.

Table 1 of Exhibit "A" provides a tabulation of the distribution of Hawaiian home lands by islands and by their present use. Table 2 of Exhibit "A" shows the distribution of homestead leases by islands and by the types of leases.

Capital improvement funds and loan funds to finance homestead development projects have been provided by legislative appropriations. The traditional means of financing has been through general obligation bond funds and general funds. The Department in 1989 received authorization from the State Legislature to issue revenue bonds as another means to finance infrastructure development on Hawaiian home lands. For the current fiscal biennium 1989-1991, the State Legislature has appropriated a total of $50.643 million for our capital improvement projects program.

For the first time in its history, federal funds are also being made available under a U.S. Congressional appropriation of $1.22 million through the U.S. Department of Housing and Urban Development (HUD). These funds will be used to supplement the development of lands for homesteads.

The Department has a broad program focus directed at the rehabilitation of native Hawaiians, which includes, but is not limited to, the educational, economical, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are improved and perpetuated.

In August, the U.S. Senate Select Committee on Indian Affairs and the U.S. House Committee on Interior and Insular Affairs held hearings on the Hawaiian Homes Commission Act of 1920 and the administration of the Hawaiian Home Lands programs. From the eloquent and moving testimonies submitted, the State of Hawaii gained new insights into the hopes and aspirations of native Hawaiians in the fulfillment of the Hawaiian Homes Commission Act. In particular, the provision of homestead leases under the HHCA was seen as a way to meet the needs of native Hawaiians for affordable housing and shelter within the State.

In response, the Department has committed itself towards making a major impact on the housing needs of native Hawaiians within this decade. Our resources have been directed towards the acceleration of housing development on Hawaiian home lands through the construction of off-site and on-site improvements and home construction. The construction of 450 homes is anticipated for this coming year; in addition, the improvement of over 1,300 lots over the next three years is planned.

Part II. Background on Senate Joint Resolution 154

In October, 1986, President Reagan signed legislation (Public Law 99-557) that approved amendments to the HHCA made by the State of Hawaii between 1959 and 1985. Since then, seven amendments have been made to the HHCA during the period July 1, 1985 to January 1, 1989.

The State's approach has been to include provisions in each amendment indicating whether Congressional consent is required pursuant to Section 4 of the Hawaii Admission Act. In instances where the measures related to administration, duties of non-administrative officials and the increase of benefits to lessees and native Hawaiians, the amendments took effect upon the governor's approval. In some instances, a severability clause was inserted even though the amendment fell within the enumerated exceptions to the consent requirement. This was done as a safeguard in the event of a judicial challenge to the failure to seek Congressional consent. Of the seven amendments, the Attorney General of the State of Hawaii was of the opinion that one amendment was clearly exempt from the consent requirement. Of the remaining six amendments, the Attorney General advised that only one amendment clearly requires the consent of the United States. While the remaining five amendments fell within one of the enumerated exceptions to the consent requirement, the Attorney General recommended that the Department seek Congressional consent to avoid judicial challenges that could arise if consent was not obtained. Senate Joint Resolution 154 thus provides for consent to the six amendments in question.

No amendments to the HHCA were enacted by the State of Hawaii in 1988. Amendments enacted to the HHCA in 1989 will be submitted in accordance with procedures established between the State and the U.S. Department of the Interior (USDOI). USDOI will be submitting the 1989 amendments to Congress upon completion of this review.

The Chairman of this Committee earlier commented following the enactment of Public Law 99-557 in 1986 that information relating to the Hawaii Legislature's perspective on the amendments would be helpful in its deliberations. Legislative material on the amendments were transmitted to USDOI and we understand that copies were provided to the staff of the Committee.

The six amendments for which Congressional consent is being sought are as follows:

Session Laws of Hawaii, 1986

Act 16	Expands benefits to native Hawaiians by allowing for participation in the establishment of enterprise zones on Hawaiian home lands which will enhance income generating potential and help distressed areas. Employment opportunities and training will also be made available to economically disadvantaged native Hawaiians.
Act 75	Provides an alternative to the Department's homestead program by distributing land to native Hawaiians through a general leasing program. This Act would allow lessees greater flexibility in financing improvements on Hawaiian home lands, in obtaining financing from off-site and on-site infrastructure improvements and in passing their leasehold interest

to a surviving spouse or children or others. By permitting Hawaiian home lands to be encumbered by way of a mortgage or security interest, the Act promotes private sector participation in financing of improvements on Hawaiian home lands without impacting on the State's debt ceiling and limited availability of funds. The department is also provided with the flexibility to engage developers and contractors in developing more tracts of Hawaiian home lands for homestead general lease awards to native Hawaiians. The bill further provides for the repeal of the statute five years after Congressional consent is given, or December 31, 1995, whichever occurs first.

Act 84 Allows the Department to be more responsive to opportunities that might arise and promotes private sector participation in developing Hawaiian home lands for homestead or commercial purposes. Native Hawaiians will be provided with leases to lots in completed homestead projects and will also receive any negotiated socio-economic benefits that are agreed upon between the Department and the developer. This bill seeks to provide the Department with a more timely means to deliver benefits to native Hawaiians. A severability clause was inserted as a safeguard in the event of a judicial challenge.

Act 85	Contributes to the implementation of a new mortgage loan program that opens a significant source of home construction financing for lessees on Hawaiian home lands. Without this avenue of funding, lessees would have little choice but to primarily rely on the department's limited loan funds. This bill expands benefits to native Hawaiians by providing for the implementation of a new financing program for the construction of affordable homes on homestead lands. A severability clause was inserted as a safeguard in the event of a judicial challenge.
Act 249	This bill facilitates more efficient administration of the Department's finances by reducing the number of funds from fifteen (15) to seven (7). A severability clause was inserted as a safeguard in the event of a judicial challenge.

Session Laws of Hawaii, 1987

Act 36	This bill repeals Act 112, Session Laws of Hawaii, 1981, and revises the manner by which the department handles the payment of net proceeds upon the surrender, cancellation or termination of a homestead lease.

Except for Act 75, State laws amending the HHCA were of a technical, non-substantive nature, dealt with matters relating to administration, or increased benefits to lessees. While laws in this category clearly do not require consent, the Department supports the intent to obtain consent to all six amendments as provided in Senate Joint Resolution 154. We concur with the Department of the Interior that consent will remove any uncertainties that may exist as to their validity.

The Department notes that each of the State measures was enacted only after the required legislative process was followed. The process requires public hearings on each bill, and at least three readings in each house. We concur in the findings of the Department of the Interior that the lawmakers of Hawaii are "in a position to judge most wisely the merits of the amendments to the HHCA."

Attached to my testimony are more detailed discussions on the amendments.

We respectfully request your favorable consideration on Senate Joint Resolution 154 for the reasons so stated. We appreciate very much the opportunity to provide our comments on this matter. I would be pleased to respond to any questions the Committee may have.

EXHIBIT "A"

Table 1. Distribution and Use of Hawaiian Home Lands
(As of December 31, 1989)

	ISLANDS					Total
	Hawaii	Kauai	Maui	Molokai	Oahu	Acreage
USES						
Homestead	20,943	831	541	9,477	921	32,713
General Leases	49,995	16,373	20,677	683	1,807	89,535
License	115	7	15	9,674	71	9,882
Others	36,830	1,358	7,762	5,532	3,801	55,283
TOTALS	107,883	18,569	28,995	25,366	6,600	187,413

Table 2. Homestead Leases, by Islands and by Types
(As of December 31, 1989)

	Hawaii	Kauai	Maui	Molokai	Oahu	Total
TYPE OF LEASE						
Residential	1,017	399	492	319	2,365	4,592
Agricultural	463	46	68	452	64	1,093
Pastoral	67	2		24		93
TOTAL	1,547	447	560	795	2,429	5,778

ATTACHMENT TO TESTIMONY
SUBMITTED BY

HOALIKU L. DRAKE, CHAIRMAN
HAWAIIAN HOMES COMMISSION

DISCUSSION: ACT 16, SESSION LAWS OF HAWAII, 1986

Summary of Purpose: To authorize the Department to participate in any Federal or State program that permits the establishment of enterprise zones on Hawaiian Home Lands.

Justification:

At the time of passage of this amendment to the Hawaiian Homes Commission Act, the "Indian Economic Development Act of 1985" had been introduced in the U.S. Congress to stimulate the creation of new jobs, employment training, development of infrastructure, and reivtalization of economically distressed Indian reservations. Incentives were to be established to encourage private organizations to construct facilities and operate in areas designated as "Indian Enterprise Zones" by the Secretary of the Interior. Work was underway to qualify Hawaiian home lands for enterprise zone designation within this proposal. The federal proposal did not pass at that time, however, federal enterprise zone legislation in the future could benefit Hawaiian home lands and native Hawaiians.

Act 16, SLH 1986, was enacted into law as an amendment to the Hawaiian Homes Commission Act to authorize the department to participate in any federal or state program that permits the establishment of enterprise zones on Hawaiian home lands, provided that economic benefits to native Hawaiians will result.

The State of Hawaii enacted enterprise zone legislation in 1986 in order to help attract private sector investment in certain areas of the state. Hawaii's law allows the creation of up to six areas in each county as enterprise zones for a period of twenty years. To be eligible, the area must meet criteria related to low income and high unemployment, be nominated by the county governing body, and be approved by the Governor. Qualified businesses within enterprise zones are eligible for state business and unemployment tax credits, and general excise tax exemptions. This state law encourages counties to provide local incentives as well. Based on a preliminary assessment, certain areas with Hawaiian home lands, such as the island of Molokai, meet the criteria for enterprise zone designation.

Enterprise zones would provide an attraction for private sector businesses, employment, investment, and facilities to locate on Hawaiian home lands. The Hawaiian Homes Commission Act provides avenues for native Hawaiians to secure general leases for use of our lands for business purposes prior to the general public. General leases provide one source of revenues to support native Hawaiian homestead activities. The combination of enterprise zone incentives, native Hawaiian business development, revenues for our homestead activities, and the jobs and income created near to native Hawaiian communities offer the prospect of significant benefits for the state, department, beneficiaries, and community.

Effectivity: Upon State of Hawaii approval

Severability Clause: No

DISCUSSION: ACT 75, SESSION LAWS OF HAWAII, 1986

Summary of Purpose: To provide an alternative to the Department's homestead program by distributing land to native Hawaiians through a general leasing program which would allow lessees greater flexibility in financing improvements on Hawaiian home lands, in obtaining financing for off-site and on-site infrastructure improvements and in passing their leasehold interest.

Justification:

There is a shortage of financing for Hawaiian home lands lessees due to the inability of lenders to place a mortgage lien on homestead properties. Even with loan guarantees, the only lender that has made loans to lessees in the past has been the Farmers Home Administration, U.S. Department of Agriculture. The Department's recent implementation of a new insured loan program with the U.S. Department of Housing and Urban Development opens another long-awaited avenue for qualified lessees to secure long term financial assistance.

However, despite these advances, more innovative financing opportunities must be sought to enable direct loans to be made to lessees as well as to finance infrastructure improvements such as roads, utilities and drainage systems. In Fiscal Year 1984-85, the Hawaiian Homes Commission set a goal of accelerating the distribution of homestead leases to native Hawaiians. Approximately 2,500 lots were awarded in a two year period. The awards included fully developed lots as well as lots with minimal or no improvements.

Many of the lessees who were awarded fully improved lots have not been able to construct homes immediately due to the lack of financing. Further, approximately 11,100 more native Hawaiians are on the Department's waiting lists for awards. Including the Department's existing homestead lessees, it is projected that approximately 13,600 families will require financing for infrastructure improvements, new and replacement homes, and development funds for farming and ranching activities. Total funding requirements to fully develop the land and provide financial assistance is estimated to approach a staggering $1 billion by the year 2000. This homestead general lease program will provide another means by which more lenders will be able to participate in providing financial assistance to the Department and its beneficiaries in developing the leasehold.

This proposal would allow lessees to obtain mortgage financing from private sector sources without impacting on the

State's debt ceiling. The proposal also provides the department with greater flexibility in developing tracts of Hawaiian home lands for homestead general lease awards to native Hawaiians.

Effectivity: Upon consent of Congress

Severability Clause Included: No

DISCUSSION: ACT 84, SESSION LAWS OF HAWAII, 1986

Summary of Purpose: To authorize the Department to develop lands for homesteading purposes and income generating purposes by contract and by agreements with developers.

Justification:

The Hawaiian Homes Commission, the executive board which heads the Department, has a fiduciary duty to its beneficiaries to administer the trust prudently. The major program administered by the Department is the homesteading program, under which native Hawaiian beneficiaries are leased homestead lands for residential, agricultural and pastoral uses for ninety-nine (99) years at one dollar ($1.00) per year rental.

Section 204 of the Hawaiian Homes Commission Act authorizes the Department to dispose of lands not leased for homesteading purposes on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands as provided by Chapter 171, Hawaii Revised Statutes, except that, generally, the Department may not sell or dispose of its lands in fee simple. The revenues derived from such dispositions are used to support homestead development activities. Consequently, the generation of income is essential to provide for the administering of the homestead program and to provide benefits to native Hawaiians.

Section 171-60, HRS, requires the Board of Land and Natural Resources (BLNR) to obtain the Governor's approval and legislative authorization through a concurrent resolution before BLNR can enter into an agreement with a private developer to develop or subdivide public lands as a leasehold project. This bill would require the Department to follow procedures similar to those imposed by Section 171-60, HRS, except that the Department would not be required to obtain approvals from the Governor and the Legislature. Within the context of its fiduciary responsibilities, this proposal would offer the Department alternative methods to achieve its objectives in a timely manner. The Department would also be more responsive to opportunities as they arise and reduce the outlay of public capital by promoting more private sector participation. Also, in negotiating the details of the developer agreement, the Department could require that benefits to promote socio-economic opportunities for native Hawaiians be included, such as subcontract set-asides, job training, employment opportunities and improving homestead areas.

In carrying out its trust responsibilities, the Hawaiian Homes Commission and the Department must adhere to high fiduciary standards owed by a trustee to its beneficiaries. These obligations include ensuring that lands not leased for homesteads are used productively to provide income and opportunities to the Department and its beneficiaries.

In the case of unimproved lands that have the potential for income, the development of these lands through agreements with private developers is prudent as the Department does not have sufficient funds to finance major infrastructure and development costs. This approach would further provide the Department with the same consideration as given to other State agencies such as the Hawaii Housing Authority and the Office of Hawaiian Affairs in the development of lands. Neither agency is required to obtain legislative authorization to enter into agreements with private developers.

Effectivity: Upon State of Hawaii approval

Severability Clause included: Yes

DISCUSSION: ACT 85, SESSION LAWS OF HAWAII, 1986

Summary of Purpose: To enable the Department to use its credit, in the form of monies due from its borrowers, as collateral for borrowing from financial institutions. Further, the measure authorizes the Department to transfer certain loan funds into the Hawaiian home trust fund to serve as cash guarantees or reserves for Federal loan programs.

Justification:

In Fiscal Year 1984-85, the Hawaiian Homes Commission set a goal of accelerating the distribution of homestead leases to native Hawaiians. Approximately 2,500 lots were awarded in a two year period. The awards included fully developed lots as well as lots with minimal or no improvements.

Many of the lessees who were awarded fully improved lots have not been able to construct homes immediately due to the lack of loan financing. The lack of funds to finance home construction loans and infrastructure improvements has hampered the ability of lessees to build on their land.

This bill allows the Department to obtain additional financing by using its loan accounts receivables, that is, money owed by present borrowers, as collateral for loans from financial institutions. The loans made to the Department could then be backed up by money due the Department. The money borrowed by the Department would in turn be made available for making new loans for home construction, as well as for the construction of infrastructure in homestead subdivisions.

The loans made under the foregoing provision shall not be construed as a legal obligation of the State of Hawaii. Loans will be secured solely by the receivables pledged while the money borrowed by the department will be repaid by lessees of the Department. Monies in the Hawaiian home loan fund will not be pledged as security due to provisions in the Hawaii Admission Act which protects this fund from impairment.

This bill further enables the Department to meet terms established for its participation in the U. S. Department of Housing and Urban Development (HUD) insured loan program. Act 284, SLH, 1985 enabled homestead lessees to participate in the HUD program. Under this program, homesteaders can apply for new or replacement homes through local financial institutions with permanent loans insured by the Federal Housing Administration (FHA). It is possible that $25 million in long term financial assistance could be made to qualified lessees under this new mortgage program.

Terms of the agreement developed by the Department and HUD require that a cash reserve be established to cover any potential defaults on the part of the mortgagees. Act 284, SLH, 1985, authorized the Department to form an account within the Hawaiian home trust fund as a reserve for loans insured by HUD. To meet this requirement, this bill authorizes the Department to transfer available funds in its loan accounts into the Hawaiian home trust fund. This bill expressly allows the Department to transfer any available and unpledged monies from the Hawaiian loan guarantee fund to set up the cash reserve. Transfer of funds from the Hawaiian home loan fund, however, would not be allowed because, under provisions of the Hawaii Admission Act, this fund cannot be impaired.

This bill also authorizes the Department to establish and charge fees for loans made. The fees will be used to cover any costs incurred to assure the repayment of loans.

Effectivity: Upon State of Hawaii approval

Severability Clause Included: Yes

DISCUSSION: ACT 249, SESSION LAWS OF HAWAII, 1986

Summary of Purpose: To consolidate the Department's funding structure by reducing the number of funds from fifteen (15) to seven (7).

Justification:

The Department previously administered fifteen different funds which provided loans for the development and repair of Hawaiian Home Lands, assistance for farm operations, operating monies to the Department, trust funds for holding monies received from its lands, and assistance for native Hawaiian rehabilitation activities.

Reduction of the existing fifteen (15) funds into seven (7) funds or accounts will provide the following benefits:

1. Simplifies the investment of available cash because the monies are pooled.
2. Provides greater flexibility in the use of funds.
3. Simplifies the transfers and cash flow from one account to another.
4. Significantly reduces the accounting workload

Effectivity: Upon State of Hawaii approval

Severability Clause: Yes

DISCUSSION: ACT 36, SESSION LAWS OF HAWAII, 1987

Summary of Purpose: To repeal Act 112, Session Laws of Hawaii, 1981, and to revise the manner by which the Department handles payment of the new proceeds upon the surrender, cancellation or termination of a homestead lease.

Justification:

Act 112, SLH 1981, was to have been submitted to the U. S. Congress for approval together with other amendments made to the HHCA by the State of Hawaii since statehood through June 30, 1985. However, because of inconsistencies between the amendments of Act 112 and Act 272, SLH 1982, Act 112 was not included in House Joint Resolution No. 17 which gave consent to prior amendments to the HHCA.

Before its amendment in 1981, Section 209 of the HHCA provided that if a homestead lease was cancelled or surrendered, or if the lessee died without leaving a relative qualified to succeed, the Department was required to appraise the value of the improvements, including crops, and pay its value to the legal representative of the deceased or previous lessee, less taxes due and certain debts owed.

In 1981, Act 112 amended Section 209 to delete much of the foregoing and to provide that in the circumstances referred to, the amount to be paid to the legal representative or previous lessee would be the amount determined under the formula set out in a new Section 210.5. This formula provides that for ten years following the commencement of the lease, the value to be paid would be the original cost of improvements, plus interest at 7%; after ten years, appraised value would be paid less the value of improvements that are "luxurious in nature."

Act 272, SLH 1982, amended Section 209 to reduce the blood quantum requirements of the spouse and children succeeding to the lessee's homestead interest. As passed, however, Section 209 contained the same language regarding the method of valuation as it existed prior to the Act 112 amendment in 1981. Because of this conflict, Act 112 was not submitted to Congress for approval as previously noted.

Section 209 was further amended by Act 137, SLH 1985, to allow the Department to pay the net proceeds to a surviving spouse and children who are not qualified to succeed to the homestead interest and who have been designated by the deceased lessee to receive the net proceeds.

This measure repeals Act 112 and removes the inconsistencies explained above. The measure further modifies the method by which the payment of proceeds of the value of the leasehold interest is handled when a homestead lease is surrendered, cancelled or terminated. The measure allows the Department to use the Hawaiian Home General Loan Fund to pay the net proceeds on a cancellation, termination or surrender of lease if the Hawaiian Home Loan Fund does not have the available cash to make such payments.

Effectivity: Upon State of Hawaii approval

Severability Clause Included: No

Senator FORD. Thank you very much, Ms. Drake.

Mr. Alexander.

STATEMENT OF THOMAS K. KAULUKUKUI, SR., CHAIRMAN, OFFICE OF HAWAIIAN AFFAIRS AS PRESENTED BY PAUL ALEXANDER, LEGISLATIVE COUNSEL, OFFICE OF HAWAIIAN AFFAIRS

Mr. ALEXANDER. Thank you. My name is Paul Alexander and I am the Legislative Counsel to the Office of Hawaiian Affairs. I am appearing today on behalf of Chairman Thomas Kaulukukui, Sr., who is the Chairman of the Board of Trustees.

I, too, will summarize our testimony.

Senator FORD. Your statement will be included in the record.

Mr. ALEXANDER. Thank you. The Office of Hawaiian Affairs which is usually referred to as OHA is a unique entity. We were created in 1979 by an amendment to the constitution of the State of Hawaii.

I would like to make it clear that OHA is a semi-autonomous entity that is responsible to native Hawaiians who elect its board of trustees, even though it is located structurally in the state of Hawaii's government.

One of the roles assigned to OHA is to assess the policies and practices of the public agencies that perform tasks relative to native Hawaiians, and to conduct advocacy for native Hawaiians.

It is in this capacity that we will comment on the Senate Joint Resolution 154. We believe that it is particularly important for Congress to maintain its oversight, or if you will, its trustee role with respect to the Hawaiian Homes Commission.

Although for the most part, Senate Joint Resolution 154 involves relatively noncontroversial amendments, some of which arguably could fall within the exceptions contained in Section 4 of the Statehood Act, we believe that the better course of action is to subject these amendments to thorough congressional review.

The Hawaiian Homes Commission was designed as a federal response to the declining status of native Hawaiians. Hearings in 1920 clearly indicate that Congress viewed the dependent status of the native community and the unique responsibility of the United States to the native community, as the basis upon which the Congress could constitutionally create this unique land trust.

The transfer of the administrative responsibility of the State of Hawaii for the Hawaiian Homes Commission reflects the political climate of the 1950s when the United States wanted to get out of the native business.

A few years earlier or a few years later, the Hawaiian Homes Commission probably would have remained a federal responsibility. OHA would oppose any efforts, including those proposed by the administration, to lessen or reduce any federal involvement or responsibility to native Hawaiians.

On the contrary, we think federal responsibility to native Hawaiians should be enhanced, not lessened. As you are aware, congressional hearings of this past summer, under the leadership of Senator Inouye on each island in Hawaii, focused on the Hawaiian Homes Commission.

Many issues and many suggestions were made to improve the Hawaiian Homes Commission, although today is not the point to discuss all of these issues in full, it is clear that the activity of the summer and the concerns reflected in Hawaii, also support greater federal activity and responsibility with respect to the Hawaiian Homes Commission.

Five of the amendments in Senate Joint Resolution 154, as Mr. Glidden points out, I guess it is four of the amendments in Senate Joint Resolution 154, are noncontroversial and we clearly support them.

Act 75 of the 1986 session is an extremely substantive amendment and is much more difficult to evaluate, for it provides a new direction for the homestead program.

In effect, the flaws of the existing program in 1920, when insufficient financial assistance was provided to the program to start with, with a poor land base, has always frustrated the leasing program.

Act 75 attempts to cure that by providing for a leasing program, a new leasing program at market value for a term of 55 and possibly 75 years, where the leasehold itself would become a property interest that would be able to be financed by conventional mortgages and other devices.

While this would go a long way towards curing the inherent defects in the Hawaiian Homes Commission's programs, particularly the lack of financing for improvements of homesteads and should permit the department to meet the impressive goals that it has established for itself in providing for leases to native Hawaiians, OHA too has concerns that Act 75 changes some of the fundamental direction of the homestead program, particularly pertaining to the ability of leases and interests to be transferred to non-Hawaiians.

Another question that we have concerning Act 75 is the role that economics may play in allowing applicants to leapfrog effectively on the role, based on wealth, to get a leasehold.

In closing, it is important I think to give credit where credit is due, and compliment Chairperson Drake for the leadership, energy and dedication that she has brought to the challenging task of making this vital land base of native Hawaiians work for the benefit of native Hawaiian people.

[The prepared statement of Mr. Kaulukukui follows:]

TESTIMONY
OF
THOMAS K. KAULUKUKUI, SR.
CHAIRMAN, OFFICE OF HAWAIIAN AFFAIRS
ON
SENATE JOINT RESOLUTION 154
BEFORE
THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

MARCH 8, 1990

On behalf of the Trustees of the Office of Hawaiian Affairs (known as OHA), I wish to thank Chairman Johnston and members of the Committee for inviting OHA to testify on S. Res. 154.

It is extremely gratifying to see that the Congress maintains its responsibility to assure that the federally created trust known as the Hawaiian Homes Commission is properly administered. We believe that today's hearings will demonstrate that this federal oversight-trustee function continues to be required, and in fact, should be enhanced.

In summary, OHA supports the passage of S.J. Res. 154 with respect to Acts 16, 84, 85, & 249 of the 1986 Hawaiian Legislative Session and Act 36 of the 1987 Hawaiian Legislative Session; we, however, have some concerns about how Act 75 of the 1986 Hawaiian Legislative Session would actually operate.

As you may be aware the creation of the Office of Hawaiian Affairs was recommended in 1978 by Native Hawaiian delegates to the Hawaii State Constitution. All voters in Hawaii ratified the recommendation, and in 1980, Native Hawaiians elected the trustees of OHA. In effect, OHA is a unique entity, a constitutional office of the state of Hawaii that is separate from the state government and responsible to the native community through the electoral process. Today, approximately 60,000 Hawaiians natives -- descendants of the original inhabitant of the Islands pre Western contact -- are registered to vote, and well over 60 percent turn out to elect the trustees. One of OHA's roles is to assess the policies and practices of State agencies which affect Native Hawaiians and to conduct advocacy for our constituents. It is in this capacity that we present this testimony. [Attached to our testimony is a more detailed description of OHA]

It is important to place the Hawaiian Homes Commission in context in order to evaluate the legislative items before this Committee. The Hawaiian Homes Commission, as you are no doubt aware, came into being in 1921 in part as a response to the fear that Native Hawaiians were in danger of extinction. Congressional hearings of the era point to a congressional intention to assist in rehabilitating Native Hawaiians by returning Native Hawaiians to landed status. This was necessary because the previous century had seen the unique Hawaiian land system converted, under extreme pressure from non-Hawaiians, to a private property system modeled on the English common law. Perhaps even more devastating than the westernization of the land system, was the overthrow of the Hawaiian Monarch in 1893, with the active participation of the United States, and the subsequent uncompensated receipt by the United States of vast quantities of land that had previously been held by the Hawaiian Monarchy. By the time of the Hawaiian Homes Commission legislation, Native Hawaiians whose culture-religion-tradition was inherently tied to the land, had become a dependent people with very little land.

The Hawaiian Homes Commission received approximately 200,000 acres of federal land (previously belonging to the Hawaiian Monarch -- in effect they received their own land) to be used as 99 year lease/homesteads for Native Hawaiians. Several critical compromises were made in the legislation which still have significance. Native Hawaiians on the recommendation of plantation interests were defined as persons with fifty percent of more blood native to the Islands pre-western settlement. Commentators assert that the blood quantum requirement was pursued in order to reduce the pressure for available lands and thereby protect plantation leases from homesteading. Another limitation on the Hawaiian Home Commission was that much of the land set aside was of very poor quality -- land that was neither particularly suited to agriculture nor otherwise inherently valuable. And finally almost no provision was made to finance the settlement of Native Hawaiians on the lands, or to make the lands viable for settlement. The transfer of the management of the trust to the State of Hawaii in the Admissions Act in 1957 reflects the dominant political sentiment of that era -- to remove the federal government from responsibility for native people. This philosophy known as "termination", which although rejected as federal policy for the past two decades, still affects Native Hawaiian - Federal relations.

As you are aware last summer under the leadership of Senator Daniel K.Inouye of Hawaii, joint congressional hearings conducted on each Island in Hawaii focused on the Hawaiian Homes Commission. The litany of complaints was extensive. Although today is not the time to address the outpouring of concern and suggestions that those hearings elicited, it is important to point out that these mismanaged acres suffer from seventy years of neglect and that extensive efforts on both a federal and state level will be required to cure the identified problems.

The six amendments before the Committee, with the exception of Act 75, are essentially modest efforts to focus on identified problems.

Act 16 (1986) provides for Hawaiian Homes lands participation in any federal enterprise zone legislation that may be enacted.

Act 84 (1986) allows the HHC to devlop lands for homesteading and income generating purposes by contract and agreements with private developers. The purpose of this amendment is to make it easier for the HHC to enter into timely agreements in order for it to enhance income generation from lands that have not been leased.

Act 85 (1986) allows HHC to use its credit as collateral for borrowing from financial institutions, and to provide for a Hawaiian home trust fund necessary to serve a guarantee or reserve for FHA mortgage programs for homesteaders.

Act 249 (1986) allows a consolidation of 15 separate accounts or funds into 7 accounts or funds of the HHC.

Act 36 (1987) repeals Act 112 (1981) which was inconsistent with HHCA amendments approved by Congress in H.J. Res. 17 relative the formula utilized appraise the value of improvements on a lease, in an heirship situation, where no eligible heir could inherit the leasehold.

Act 74 (1986) which does not go into effect unless Congress approves, it provides a 5 year program of "alternative" leasing through a general leasing program; the program has the admirable goal of providing flexibility for financing critically needed leasehold improvements. Several concerns require careful consideration before this program is permitted to go into effect: absolute assurance is required that no HHC land be allowed to go out of trust or for that matter be functionally placed in indefinite lease status because HHC is unable purchase the leasehold improvements made during the term of the lease; and that fair market value requirments for leasing should not allow some applicants to leapfrog ahead of other homestead applicants on the basis of wealth.

As noted earlier, we anticipate that future amendments will address some of the over-riding issues facing Native Hawaiians and it will be critical to maintain congressional oversight of this fragile land base of Native Hawaiians -- a program that is still a long way from achieving it's full potential.

Thank you for the opportunity to testify on S.J. Res 154.

OFFICE OF HAWAIIAN AFFAIRS

The establishment of the Office of Hawaiian Affairs followed the passage, by all the people of Hawai'i, of a state constitutional amendment in 1978. This amendment recognized that "ceded" lands were held as a public trust for native Hawaiians, and the general public, and it specified that Hawaiians were to receive a *pro rata* share of the trust "for the betterment of conditions of native Hawaiians."

In implementing the terms of that amendment, the legislature in 1979 created the Office of Hawaiian Affairs to:

1. Receive and manage a *pro rata* portion of the public land trust revenues for the betterment of Hawaiians.
2. Better the conditions of Hawaiians.
3. Serve as the principal public agency in the state responsible for the performance, development and coordination of programs and activities relating to native Hawaiians and Hawaiians, except those within the jurisdiction of the Hawaiian Homes Commission.
4. Assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conduct advocacy efforts for native Hawaiians and Hawaiians.
5. Apply for, receive and disburse grants and donations from all sources for native Hawaiians and Hawaiians.
6. Serve as a receptacle for reparations.

What is the legal and historical background of OHA?

The action of the state Constitutional Convention and the state legislature was the culmination of several decades of historical activity. In 1898, one of the conditions of the Joint Resolution of Annexation stated that all Hawai'i Government and Crown lands be transferred or "ceded" to the United States Government "for the benefit of the inhabitants of Hawai'i."

The "Crown lands," once the property of the throne, combined with the Government lands to total nearly 1.8 million acres, about 43 percent of the surface area of the islands.

The Organic Act of 1900 provided that the Territory of Hawai'i would retain control and management of these "ceded" lands, except for that portion "set aside" for the United States by either the governor's or president's Executive Order.

When Hawai'i was admitted as a state in 1959, the federal government returned to the State ownership of all the ceded lands which were not set aside for its own use. Section 5(f) of the Admission Act mandated the State to hold these ceded lands as a public trust for one or more of the following five purposes:

1. The support of public schools and other educational institutions;
2. The betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, as amended, that is, any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778;
3. The development of farm and home ownership on as widespread a basis as possible;
4. The making of public improvements; and
5. The provision of lands for public use.

How was OHA formed?

During the 1978 Constitutional Convention, the Committee on Hawaiian Affairs met to review the Article in the Constitution dealing with Hawaiian Home Lands and to discuss many Hawaiian-related issues. As a result of this review, the Committee proposed that an Office of Hawaiian Affairs be established, based on several legal and historical precedents:

- Since the fall of the Constitutional Monarchy in 1893, Hawaiians have had less and less of a voice in government.

- The boards and commissions set up as trusts to help native Hawaiians or Hawaiians are either appointed by the courts, or the Governor with the consent of the state Senate.

- The income from the public land trust was not being used to directly benefit native Hawaiians.

- Hawaiians needed a state agency that would represent their needs and concerns, and coordinate programs for all of them.

The above areas of concern resulted in the decision to introduce the amendment setting up OHA (later known as Article XII), which was later ratified by all voting residents of Hawai'i. Article XII, Section 4 specified that the lands granted to the State by Section 5(b) of the Admission Act, with the exception of the Hawaiian Homes Commission's "available lands," were to be held as a public trust for native Hawaiians and Hawaiians, and described a nine-member elected Board of Trustees.

Hawaiians were defined as "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which people thereafter have continued to reside in Hawai'i."

In Section 6, for the first time, a *pro rata* portion of proceeds from the public land trust was specifically earmarked for native Hawaiians. Section 6 also outlined the powers and duties of the Board of Trustees, which include the power to manage and administer the assets of the Office, formulate policy, and exercise control over the Office through the Administrator of the Office of Hawaiian Affairs.

In 1979, the legislature passed the enabling legislation for the Office of Hawaiian Affairs, and appropriated $125,000 for the its establishment.

Why was OHA established?

The establishment of OHA was an attempt to

1. Give Hawaiians more of a voice in government.

2. Accord to them the right to choose their representatives through the election of OHA trustees;
3. Secure for native Hawaiians a pro rata portion of the public land trust and;
4. Offer representation for all Hawaiians.

In November of 1980, Hawaiian voters elected the first OHA Board of Trustees. As required by law, the trustees are Hawaiian and elected by Hawaiians statewide. The trustees form a nine-member Board with one member from each of the islands of Kaua'i, O'ahu, Moloka'i, Maui, and Hawai'i. The remaining four trustees may reside on any of the Hawaiian Islands. Trustees are elected for four-year staggered terms, and from their membership they elect a chair and vice-chair.

How is OHA Funded?

The State Constitution assigns OHA the responsibility to manage funds for two classes of beneficiaries, native Hawaiians and Hawaiians. While Article XII established that proceeds from a *pro rata* portion of the public land trust be designated for the betterment of conditions of native Hawaiians (no provisions were made for Hawaiians) as indicated in Section 5(f) of the Admissions Act, the Article does not specify the amount of the *pro rata* portion to be used for native Hawaiians. That determination was left to the legislature.

Therefore, the 1980 legislature set 20 percent of the public land trust proceeds as the *pro rata* portion entrusted to OHA. The 1980 legislature also appropriated an additional $100,000 from the State's general revenues to defray the costs of establishing and operating the Office.

OHA presently receives public land trust revenues which are restricted to benefit only the native Hawaiians. Since 1980, the State legislature has been the primary source of funding for OHA programs benefiting Hawaiians.

OHA may also seek funds from other sources, such as foundations, the Federal government, the business sector and private donors.

How is OHA organized?

Under the eight-member Board of Trustees is an Administrator, who reports to the board. Under the Administrator are nine divisions:

- Administrative Services Division -- provides management assistance, policy development, resource allocation and fiscal control, and administrative services for OHA.

- Public Information Division -- gathers and disseminates information designed to keep the Hawaiian community and the general public informed of activities and accomplishments of OHA.

- Health and Human Services Division -- works to assure that OHA beneficiaries are informed of all public and private programs that provide health and human services. Also, supports the development, improvement and expansion of such programs. This division will be especially involved in the Native Hawaiian Health Care Act as it becomes a reality.

- Planning and Development Division -- provides comprehensive planning services, data compilation and analysis, policy drafts for trustee approval, and grant applications and management.

- Government and Community Affairs Division -- facilitates and implements OHA's legislative and advocacy activities at the federal, state and county levels of government; promotes greater participation of beneficiaries at all levels of government through voter education and registration, and education of Hawaiian issues.

  The division also assists beneficiaries to identify, clarify and resolve problems through personal contact with Community Liaisons stationed in OHA satellite offices on each major island.

- Land and Natural Resources Division -- monitors ceded lands pursuant to constitutional and statutory mandates, and assures an effective and efficient means to acquire government and private lands for economical, educational, social, cultural and advocacy projects.

- Economic Development Division -- assists with developing and maintaining economic vitality of Hawaiian segment of the state's economy by assessing and updating the economic needs of OHA's beneficiaries; encouraging stable and equal employment and advancement opportunities; formulating policies and recommendations on economic issues; providing technical and financial assistance; and providing grants or loans to beneficiaries for viable economic ventures.

- Culture and Education Division -- works to assure that Hawaiian youths have access to primary and secondary level education that is responsive to their needs; to provide Hawaiians with increased access to meaningful higher education and post-graduate education; to promote the study of Hawaiian culture, history and language; and to assure the development and implementation of a Hawaiian education program as mandated by Article X, Section 4 of the Hawai'i Constitution.

  Also works to increase the awareness and understanding of Hawaiian culture; assists in the preservation and perpetuation of the culture; provides assistance on government policies and plans related to Hawaiian culture that should be coordinated with the private sector.

Senator FORD. Thank you, Mr. Alexander. I will have a few questions and Senator Inouye may have some questions, but Ms. Drake, your predecessor at the Commission initiated congressional action on these six amendments two years ago with a letter to the Department of Interior.

In that letter the former chairman stated the view that only one of the six amendments, Act 75 of 1986 I believe, was the one which clearly required congressional consent, and that in the case of the other five, consent should be sought only to avoid judicial challenge that might be made if consent was not obtained.

Do you agree with those views, and would you, for the record, Ms. Drake, briefly explain what the five amendments do which you believe do not require consent?

Ms. DRAKE. Of the six amendments, only Act 75 clearly requires the consent of Congress to implement. The other five bills relate to administration or expansion of benefits to the lessees, which do not require the consent of Congress to implement.

However, the State of Hawaii, and this is the attorney general, and the Department of Interior have cautioned us that consent also should be sought for these five bills, to avoid judicial challenges.

Therefore, I strongly believe that it would be prudent and wise of us to ask for the consent of Congress on these five amendments.

Senator FORD. Mr. Glidden, do you agree with Mrs. Drake?

Mr. GLIDDEN. Yes, Mr. Chairman.

Senator FORD. Mr. Glidden, let me ask you this then, do you agree that Act 75 does not legally preclude the possibility that a general lease could be transferred to nonnative developers and because of the value of the improvements, could be effectively alienated from the intended beneficiaries?

Mr. GLIDDEN. Well, it is my understanding that there are different legal opinions on that question. On the issue of whether or not the improvements could be permanently alienated, I think I would turn to the gentleman representing the Attorney General's office, to address.

In my opinion it does not, but I think he could articulate it better.

Senator FORD. That would be fine. I think we should get this in the record.

Mr. KAEO. Let the record reflect that my name is George Kaeo. I am a Deputy Attorney General, State of Hawaii, and have been assigned to the Department of Hawaiian Home Lands for the past 15 years.

To specifically answer your question with respect to the leasehold interest, the general leasehold interest, whether it is possible for it to be alienated to a nonnative Hawaiian, the answer is yes.

The answer is that in the event a native Hawaiian who obtains a homestead general lease under this program, and mortgages the homestead leasehold interest, and for some period thereafter is unfortunately unable to meet his obligations under the general lease, it is possible that the mortgagee could foreclose on that leasehold interest, and should the department not decide, based on his then outstanding circumstances, not to exercise its first option right that it has under the Act, the leasehold interest could be foreclosed and the interest purchased by a nonnative Hawaiian.

It should be noted though that what is being purchased is a leasehold interest. That is, one that is for a period of a certain number of years. The interest does not in any way affect the fee simple interest.

That will never leave the trust. It remains a trust asset, except for that term of that general lease which may be 55 years or which may, for limited circumstances as laid out under this bill, be extended up through 75 years, and no longer than that.

Senator FORD. Yes. Everything would be paid off in 55 years and then the individual that holds that, could they then sell it?

Mr. KAEO. Well, what normally happens, Senator Ford——

Senator FORD. You lawyers bother this country boy who is a nonlawyer, normally, but could he? You said yes very quickly to my first question——

Mr. KAEO. Yes.

Senator FORD. And I like those kinds of answers. Could they at the end of this period of time or when the mortgage is paid off, sell?

Mr. KAEO. The leasehold interest? Yes.

Senator FORD. Yes.

Mr. KAEO. You could also sell the improvement on the property. At the present time the department does have a number of outstanding general leases. Under the terms of the general leases, at the expiration of that general lease, the improvements revert to the Department as well as the lands.

So that in effect, at the expiration of the general leases, the Department would get the benefit of the improvements that have been placed on by that lessee, as well as lands are returned to the trust estate.

Senator FORD. The Act also permits transfer without mortgage foreclosure. I believe that is 503(f). Is that true?

Mr. KAEO. That is true.

Senator FORD. Let us go back to the question I asked Mr. Glidden and he so kindly turned it over to you, where I said, do you agree that Act 75 does not legally preclude the possibility that a general lease could be transferred to a nonnative developer, developed and because of the value of the improvements, and so forth.

In such a case, I presume that the beneficiaries could sue the State for breach of trust?

Mr. KAEO. Yes.

Senator FORD. Could the Federal Government also be sued?

Mr. KAEO. I would have to answer yes, and the only reason I answer yes is that lawyers being lawyers, they will always try to find the deep pocket, if you will. The state would probably be sued on the basis of a trust responsibility, and if the lawyers felt that there was a possibility that the Federal Government could somehow be held responsible, they would try to sue the Federal Government as well.

Whether they would succeed, I personally do not think so.

Senator FORD. Would you be willing to get together with state officials in the Justice Department to see if Act 75 could be refined, I guess that is as good as a word as any, other than changed—and refine it to prevent such potential problems?

Mr. **Kaeo**. I could work with the state officials and other federal officials, but if I could, Senator, may I make a brief statement?

Senator **Ford**. Sure.

Mr. **Kaeo**. When the Hawaiian Homes Commission Act was initially passed, it developed a program or established a homesteading program which basically permitted homestead leases to be issued for $1 a year for 99 years.

The leasehold interests themselves were inalienable. That is, they could not be mortgaged, they could not be pledged. They could not be, in any way, sublet to anyone other than a native Hawaiian.

A homestead lessee could not even sublet an interest in his homestead, even to another native Hawaiian, but he could assign or transfer that interest to another native Hawaiian.

One of the biggest problems the Department has experienced from the inception of the program and up to today is the ability to obtain the necessary financing, the wherewithal to provide the native Hawaiians with the ability to put on the necessary improvements, as well as the state itself, in terms of being able to put on infrastructure.

This general leasing program was designed to take into account two existing programs that the Department presently maintains: a homesteading program and the general leasing program. They try to take the best features of both of those programs which if permitted would allow a native Hawaiian to obtain a general lease, would give him or her the flexibility of utilizing that leasehold interest to secure financing in the private sector.

I would suggest that, while we could probably look at attempts to refine, if those refinements would in some way actually restrict the utilization of that parcel, the leasehold interest for that 55 or 75 year period, then it would lack the marketability, the finance ability which this whole general leasing program was designed to attempt to accommodate.

But we would certainly try to work something out.

Senator **Ford**. I hope you understand I am trying to help, and my friend, I want to do anything I can to assist him and will. What you see and what the legislative branch sees could be two different things, and we would hope and I suspect we can, find some ground on which everyone could agree and that we would not have any kind of a judgment call here that would be adverse.

It is not one for me to say what is right and wrong. I want to try to accommodate.

I have no further questions. Senator Inouye, do you have any questions you would like to ask this group?

Senator **Inouye**. Mr. Kaeo, just a clarification.

Mr. **Kaeo**. Yes, sir.

Senator **Inouye**. If am a beneficiary and I went to a bank to borrow some money and place a mortgage upon my improvement, does that transaction require the consent of the Commission?

Mr. **Kaeo**. We are talking about the mortgage being placed on the new general lease?

Senator **Inouye**. Yes.

Mr. **Kaeo**. Yes, sir, it does.

Senator **Inouye**. So it is subject to your approval?

Mr. **Kaeo**. Yes, it does.

Senator **Inouye**. And this program or this scheme of raising funds to provide for assistance in building infrastructure and such would be for five years?

Mr. **Kaeo**. Yes, Senator Inouye. There is a Sunset Provision which is the very last section in Act 75 that basically establishes this as a trial program and should it prove successful, as we anticipate that it will, we will need to seek legislative approval from both the state legislature and eventually Congress again.

Senator **Inouye**. So if there are shortcomings in this proposal, the risk would be limited?

Mr. **Kaeo**. We believe so, Senator Inouye.

Mr. **Glidden**. Senator, if I might jump in here, I think the record should show that the five year period begins once Congress consents to the Act.

Mr. **Kaeo**. That is correct, and it should also be noted that it ends December 31, 1995.

Senator **Inouye**. Whichever comes first?

Mr. **Kaeo**. Whichever comes first.

Mr. **Glidden**. Senator, perhaps if I might, it would be an appropriate place, because this record is so important to the native Hawaiians, and I know Senator Inouye feels very strongly about the matter we are discussing here, and because we are discussing things which years from now may be looked at and analyzed and studied, I think it is incumbent upon me to point out that the position of the administration on the question of whether or not the United States is a trustee is that the United States is not a trustee.

And I realize that Senator Inouye feels very strongly about this, but it is incumbent upon me to point out that in a footnote to a 1978 decision by the Appeals Court of the Ninth Circuit, the Court stated, and I quote here: "The state is the trustee. The United States has only a somewhat tangential supervisory role under the Admission Act, rather than the role of trustee."

That decision was, I think, agreed to in a 1985 case, the case of *Price* v. *The State of Hawaii,* and in any event, that is the position of the administration at this point.

I also should point out that at one time a letter was written by an individual in the Solicitor's Office of the Interior Department which came to the opposite conclusion, and it is the position of the Interior Department today that that letter was at war with the law of the case and since this is such a sensitive subject, I just thought it should be inserted in the record at some point here.

Senator **Ford**. What position did the person hold that wrote the contrary letter?

Mr. **Glidden**. The person that wrote the contrary letter took the position that the United States was——

Senator **Ford**. No, what position did he or she hold?

Mr. **Glidden**. Deputy Solicitor in the Solicitor's Office of the Department of the Interior. Senator Inouye is familiar with this letter and I myself wrote him a letter dated October 17th, laying this out just so that he would understand our position because this is a very important point to the native Hawaiians.

Senator **Inouye**. But is it not also true, Mr. Glidden, that the Justice Department sent a similar letter?

Mrs. Van Cleve. The Justice Department wrote to the same addressee in the Civil Rights Commission in 1979, but I believe it did not take a position on whether the United States stood in the position of a trustee under the Homes Commission Act.

I will be glad to check that point and advise the staff about it, but I am quite sure it did not take that position.

[The information follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

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SENATE COMMITTEE
ENERGY AND NATURAL RESOURCES
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APR 05 1990
WASHINGTON, D.C. 20510

April 2, 1990

Honorable J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510-6150

Dear Mr. Chairman:

Thank you for your March 14 letter concerning the hearing on March 8 before the Committee on Energy and Natural Resources on S. J. Res. 154, on the Hawaiian Homes Commission Act. I would like to provide some further information. At page 36 of the transcript, Senator Inouye inquired about the position of the Department of Justice on the question whether the United States has a trust responsibility under that Act or under the Statehood Act. We responded that we thought the Justice Department had not addressed itself to that question, but that we would explore the matter and write further to your Committee on the subject.

As we stated at the hearing, we were unaware of any Department of Justice opinion on the subject. We have since inquired of appropriate personnel in that Department and they too believe that the question has not there been considered.

An Interior witness at the March 8 hearing did refer to a letter from the Justice Department to the U.S. Civil Rights Commission, which related to the Homes Commission Act, but stated her recollection to be that it expressed no view on the instant question. We enclose for your information a copy of the letter she had in mind. The letter, dated August 13, 1979, is directed to the Western Regional Office of the U. S. Civil Rights Commission and is signed by the then Assistant Attorney General for the Division of Land and Natural Resources. The letter states that the Department of Justice would have authority to institute a suit against the State of Hawaii for breach of trust. As you know from our testimony, we wholly agree with that position.

The Justice Department letter of August 13, 1979, is in effect a companion to the letter of August 27, 1979, signed by a former Deputy Solicitor of the Interior Department. Each responded to the same set of questions from the Civil Rights Commission. It is that August 27, 1979, letter from our former Deputy Solicitor that states the opinion that the United States serves as trustee with respect to the Homes Commission program. As I pointed out at the March 8 hearing, that is not now the position of the Interior Department. I advised Senator Inouye of our current view in my letter to him of October 17, 1989. A copy of that letter is also enclosed for your information.

Please let me know if you would like further information or clarification on any of these matters. I am sending a copy of this letter and its enclosures to Senator Inouye.

Sincerely yours,

Timothy W Glidden

Timothy W. Glidden, Counselor to
the Secretary and
Secretary's Designated Officer
Hawaiian Homes Commission Act

Enclosures

United States Department of Justice
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES
DIVISION
Washington, D.C. 20530

August 13, 1979

Mr. Philip Montez
Regional Office Director
Western Regional Office
United States Commission
on Civil Rights
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Montez:

This is in response to your letter of August 1, 1979, concerning the Hawaii Admission Act of March 18, 1959, 73 Stat. 4, as amended, and the Hawaiian Homes Commission Act of 1920, as amended, 42 Stat. 108. The identical letter has been sent to the Secretary of the Interior.

As your letter points out, section 5(f) of the Admission Act requires that certain lands, including the Hawaiian home lands, conveyed by the United States to the State ". . . be held as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of the native Hawaiians . . . for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use." As noted by the Ninth Circuit, section 5(f) contains an ambiguity since it arguably provides that the Hawaiian home lands may be used for the same general public purposes as other federal lands conveyed to Hawaii pursuant to the Admission Act. *Keaukaha - Panaewa Community Association v. Hawaiian Homes Commission*, 588 F.2d 1216, 1218, n. 2 (9th Circuit, 1979). A petition for certiorari is now pending in the Supreme Court. The subsection further provides that: "such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of the said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States."

In response to the specific questions raised in your letter, we offer the following:

1a. The Department of Justice would have the exclusive litigation authority if suit were brought by the United States to enforce the trust. The Department of the Interior has no authority to file lawsuits on behalf of the United States. It is our view, however, that individual beneficiaries of the trust may also file suit if they believe the trust to have been violated. In this respect, we disagree with the Ninth Circuit's decision in Keaukaha - Panaewa, supra.

1b. The authority to initiate litigation is discretionary, rather than mandatory.

1c. If a request is made to the Department of Justice by the Secretary of the Interior to initiate legal action against the State of Hawaii, we would review the request to determine if the case has legal merit and factual support. If we find that a meritorious case exists, we would file an action.

1d. No actions have been filed by the United States.

1e. The State of Hawaii has the responsibility to administer the lands in accordance with the Admission Act and the State's constitution and laws. If the State fails to fulfill this responsibility, the United States is authorized to bring suit to require the State to fulfill its responsibility.

2. The series of questions in Part 2 relate to the function of the Secretary of the Interior. We defer to the Department of the Interior with respect to these issues.

Sincerely,

James W. Moorman

James W. Moorman
Assistant Attorney General
Land and Natural Resources Division

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

October 17, 1989

Honorable Daniel K. Inouye
Chairman, Select Committee on
  Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In reflecting upon your August hearings in Hawaii concerning the Hawaiian Homes Commission Act, it seemed to me that we ought to be in further touch with you with respect to this Department's understanding of the current responsibilities of the United States Government under the Act.

As you know from Secretary Lujan's letter to you of April 17, 1989, and from our testimony during the hearings, the Department of the Interior has accepted the responsibility to act as "lead Federal agency" with respect to Federal responsibilities concerning the Hawaiian Homes program, as the 1983 Federal-State Task Force on the Homes Commission Act recommended. We believe, as did the Task Force, that in the interests of orderly government some Federal department or agency should do so, and given this Department's role with respect to the Territory of Hawaii, it has seemed logical for Interior to serve in that capacity. That has meant that we in Interior have taken initiatives with respect to the Federal consent legislation that is required under the Statehood Act. In addition, given the provision of section 204(3) of the Homes Commission Act pertaining to land exchanges, the Secretary also continues to be required to act on proposed exchanges of home lands for other lands.

The United States has a further, explicit power under section 5(f) of the Hawaii Statehood Act. Section 5(f) provides that certain lands (including Hawaiian home lands) "will be held by said State [of Hawaii] as a public trust" and that the use of such lands for other than the purposes specified in the statute "shall constitute a breach of trust for which suit may be brought by the United States." If such an action were brought, only the Department of Justice could institute it, but the Department of the Interior could appropriately offer its recommendations to the Department of Justice on the subject.

On several occasions during the hearings, you quoted from a letter signed by a former Deputy Solicitor of this Department, dated August 27, 1979, which states in pertinent part that

". . . it is the Department's position that the role of the United States under section 5(f) is essentially that of a trustee." We do not believe that to be a correct statement, and we do not want you to infer otherwise from our silence. Accordingly, my purpose is to advise you that our position is the one expressed, quite without equivocation, by the U.S. Court of Appeals for the Ninth Circuit in Keaukaha-Panaewa Community Assoc. v. Hawaiian Homes Commission, 588 F.2d 1216 (1978):

> . . . the state is the trustee . . . . The United States has only a somewhat tangential supervisory role under the Admission [Statehood] Act, rather than the role of trustee. (At 1224, n.7)

To the same effect is Price v. State of Hawaii, 764 F.2d 623 (9th Cir., 1985).

Oddly, while the Keaukaha-Panaewa decision is cited in the 1979 letter, it is there neither discussed nor distinguished, and the legal conclusion that follows in the letter is at war with the words of the court's decision. In the circumstances, we cannot stand behind the 1979 letter. We instead adopt the position of the Court of Appeals.

For your information, the 1979 letter is in error in another connection. It refers to three responsibilities of the Secretary of the Interior under the Homes Commission Act, two of which have been repealed and which had been repealed before the 1979 letter was written. Sections 204(1) and 212 were amended by the 1978 Constitutional Convention in Hawaii to eliminate references to the Secretary of the Interior, among other things, and the changes were approved by the voters in the November 1978 Hawaii election. The third section to which reference is made in the 1979 letter, section 204(4), relates to land exchanges and it continues to refer to the Secretary of the Interior, as discussed above, but it was renumbered in 1978 as section 204(3).

I have discussed these matters with the Solicitor of the Department of the Interior, Mr. Martin L. Allday, who has authorized me to state that he concurs in the legal conclusions stated herein. Our mutual hope is that this letter will assist in eliminating any misunderstanding, so that the Interior Department can most effectively and correctly contribute to the administration of the Hawaiian Homes Commission program.

Sincerely yours,

Timothy W Glidden

Timothy W. Glidden, Counselor to
the Secretary and
Secretary's Designated Officer
Hawaiian Homes Commission Act

Senator **Inouye**. Thank you, although my recollection would suggest that the position taken was similar to the member of the Solicitor's Office.

If, assuming that the decision of the court is correct, that the Government of the United States maintains a supervisory role and that the State of Hawaii is a trustee, does it mean that if the State of Hawaii should come forth with amendments you are bound to approve it?

Mr. **Glidden**. No, sir. It would be our position that we would be bound to refer those acts to the Congress for them to——

Senator **Inouye**. Are you bound to agree with the actions on the part of the trustee?

Mr. **Glidden**. That is not our position, no, sir.

Senator **Inouye**. Then your supervisory role is that of a super trustee then?

Mr. **Glidden**. You make a very good point, Senator. This is a——

Senator **Ford**. He always does.

Mr. **Glidden**. This is a murky legal area and I hope that sometime it will be settled one way or another to the degree of finality that you can get.

Senator **Inouye**. In other words, if the Department opposed Act 75, you could take steps to make certain that we do not adopt it?

Mr. **Glidden**. That is correct, Senator.

Senator **Inouye**. In other words, you do have a trustee responsibility, otherwise you will not be acting on behalf of the best interests of the beneficiaries?

Mr. **Glidden**. Yes.

Mrs. **Van Cleve**. Senator Inouye, I am Mrs. Van Cleve from the Solicitor's Office in Interior. I think the difficulty that we are having is that we in Interior are reluctant to use a legal term with lots of legal consequences in describing the role that the Interior Department plays with respect to Section 4 and the consent requirement.

As Mr. Glidden has stated, our quite careful research causes us to believe that at this time the United States is not a trustee, in the usual legal sense of that term, under the Homes Commission Act.

Nevertheless, we do concede that we have a variety of responsibilities, some statutory, some practical, under the Homes Commission Act. One is that the Secretary of the Interior has agreed—he agreed officially in 1983—that because the Homes Commission needed a conduit for its Federal concerns within the Executive Branch, that the Department of the Interior would serve as the lead Federal agency.

That is not a statutory requirement. That is simply a practical arrangement that we have made so that the Homes Commission and its concerns have a focal point within the Executive Branch.

As a consequence of our agreeing to serve as the lead agency, we are the people who have shepherded the consent legislation with which you are familiar, both the last round resulting in the 1986 law and this.

Now, as to our position on the substance of these laws, we are neither a rubber stamp nor a second-guesser. That is to say, we have examined each and every one of the amendments that have been enacted by the Hawaii legislature or the 1978 constitutional convention.

We did that with respect to literally dozens that were confirmed in the 1986 Federal Consent Statute.

We examined these, however, with a view of deference to the decisionmakers in Hawaii, believing that it is they who know the subject matter far better than anyone in the Interior Department could. So we do not second-guess, we have not second-guessed the decisionmakers in Hawaii as to the substance of these laws.

But when our examination reveals what seem to us to be errors, as was true in the one case that Mr. Glidden adverted to it in his prepared testimony, we are not reluctant to say that the Congress should not consent to this particular law because, in that case, it was a law inconsistent with a subsequently enacted law.

We did not want to ask the Congress, in other words, to confirm what was in fact a legislative error at the State level. So our position is a middle one. We do not just shovel all the Hawaii amendments forward to the Congress. We look at them and we pretty well believe we understand what is in them.

But we do not say that this is good or bad because we do not think that is our position, but we do find out whether they make sense in terms of the whole scheme of things, whether they fit within the existing program in terms of internal consistency.

I am sorry to be so long-winded, but that is a summary of our position.

Senator INOUYE. I realize that what I am going to ask is hypothetical, but if the Commission has decided to alienate half of the corpus in order to raise funds, and came to the Congress for approval, would you approve that?

Mrs. VAN CLEVE. I think we would write a letter to the Attorney General of the United States forthwith and say that there appears to be reason why the United States should bring an action for breach of trust, which it is authorized under the Statehood Act to do.

Senator INOUYE. So you are not in the business of just correcting typographical errors?

Mrs. VAN CLEVE. Indeed, I did not mean to imply that ours was that minor a role, but we do not see ourselves as smarter than the Hawaii Legislature on Hawaiian problems.

Senator INOUYE. In other words, if the trustee, Hawaii, is not carrying out its trust responsibilities you can tell the trustee, Hawaii, to shape up?

Mrs. VAN CLEVE. The Statehood Act authorizes the United States to sue the State for breach of trust. The Interior Department could not act to go to court. We are not authorized to do that, but we are certainly authorized to go to Justice.

Senator INOUYE. You can sue on behalf of the beneficiaries?

Mrs. VAN CLEVE. Probably, that is the effect.

Senator INOUYE. Thank you.

Senator FORD. Mr. Alexander, Mr. Kaeo laid out his scenario a few moments ago, and do you agree with his position that he related?

Mr. ALEXANDER. Yes, I think that was an accurate statement of the effect of the law.

Senator **Ford**. Fine. I am not sure, I might think about it, can we clear this up with statutory provisions? Is there any way? If we have got a problem here, why could we not add an amendment to the joint resolution and clear up whatever problems you might have?

Mr. **Glidden**. I think the State legislature will have to clear it up——

Senator **Ford**. The state would have to do that and then send it to us for approval? We could not do it ourselves?

Mr. **Glidden**. I do not think so, sir.

Senator **Ford**. Well, that is something that we might play around with a little bit, if we can get it—I am trying to help. If we got a problem here, I just throw that up and let that ball bounce a little while, see if it—we could do that contingent on approval of the legislature of the State of Hawaii.

Mr. **Glidden**. Yes, sir.

Senator **Ford**. We could reverse that a little bit, and instead of it coming this way, we could send it back and we propose this amendment and they accept it—I think what we are trying to do here is close some loopholes, are we not, and want to protect your interest and your intent.

Do you have any further questions, Senator Inouye?

Senator **Inouye**. I just want to thank you, Mr. Chairman, for giving me this opportunity and great honor to sit with you.

Senator **Ford**. I do not know about the honor, but I needed your help.

Senator **Inouye**. And I am most grateful to you for receiving my constituents with such graciousness.

Senator **Ford**. Well, if they are all like you, we will not have any problems anywhere. There may be some questions of all of you later and we will submit those to you in writing. They will be a part of the record. I hope when you receive those questions, if we send you any, that you will respond in a timely manner so that we can proceed with this resolution and try to do what is right.

This hearing is adjourned. We look forward to a long night, trying to get the air clean like it is in Hawaii.

[Whereupon, at 2:58 p.m., the committee hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

APR 09 REC'D

JOHN WAIHEE
GOVERNOR
STATE OF HAWAII

HOALIKU L. DRAKE
~~ILIMA A. PIIANAIA~~
CHAIRMAN
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P. O. BOX 1879
HONOLULU, HAWAII 96805

APR 10 1990

April 6, 1990

OFFICIAL COMMITTEE FILE
PLEASE RETURN

The Honorable J. Bennett Johnson, Chairman
United States Senate Committee on
Energy and Natural Resources
Washington, DC 20510-6150

Dear Chairman Johnson:

This is in response to your letter of March 14, 1990, requesting our comments to questions posed by the Committee in its review of S.J. Res. 154, to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act.

The Committee's questions concerned Act 75 which authorizes an alternative homestead general leasing program for the department. We hope that the enclosed detailed comments will provide you with the additional background necessary for your favorable action. In regard to your concerns on the potential alienation of the homestead lands, we want to emphasize that under this legislation, the homestead lands will not be lost to the trust. The fee simple title to Hawaiian home lands will always remain with the State.

It was a pleasure meeting you and Alan Stayman of your staff at the recent hearing before your Committee. Please let me know if further assistance or clarification is required. I look forward to your favorable recommendation on S.J. Res. 154.

Warmest aloha,

Hoaliku L Drake

Hoaliku L. Drake, Chairman
Hawaiian Homes Commission

Enclosure

DHHL COMMENTS TO QUESTIONS POSED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

(Please Note: In responding to your concerns, we have regrouped the questions according to the affected Sections of Act 75.)

Questions: Re Section 502

Section 502 authorizes the department to enter into agreements with developers without recourse to public auction for the construction of improvements. What is the justification for not using public auction in such contracting?

What provisions in this Act would protect the program from "sweetheart" contracts?

Section 502 also provides that "no state funds shall be utilized" for infrastructure improvements and for the development of tracts or residential units. Given that this program is a state trust responsibility, what is the basis for this prohibition on the use of state funds?

For the record, would you please provide the total state appropriation to the Hawaiian Home Lands program for each year from 1960 to the present.

DHHL Comments

The department included similar language found in Chapter 171-60, Hawaii Revised Statutes, in drafting the provision relating to development agreements. Chapter 171-60, HRS, authorizes the Board of Land and Natural Resources to enter into development agreements with private developers:

> "...Notwithstanding anything in this chapter to the contrary, the board, may, by negotiation and without recourse to public auction, with the prior approval of the governor and the authorization of the legislature by concurrent resolution approving a development project, such concurrent resolution to be adopted by each house no earlier than forty-eight hours after printed copies thereof have been made available to members of that house, (1) lease public lands...to a private developer or developers, or (2) enter into a development agreement with a private developer or developers, for development and subdivision of such lands as a leasehold project for agricultural, industrial, single-family or multiple-family residential, commercial, business, or hotel and resort uses, as provided in this subsection."

Chapter 171-60 also includes the terms and conditions of the proposed disposition. A copy of Chapter 171-60 is attached for information.

In drafting Act 75, the department felt it was appropriate to also provide the department with the similar authority to enter into development agreements without recourse to public auction.

To your question as to what would protect the program from "sweetheart" contracts, please refer to Act 84. Act 84 was also passed by the 1986 Legislature and it clearly provides a process for the disposition of development contracts. Note that the process contains the following protection:

1. Minimum rental of the lands to be disposed of on the basis of the fair market value of the lands;

2. Notice of the proposed disposition in accordance with applicable requirements of Section 171-60(a)(3), HRS; and

3. Establishment of reasonable criteria for the selection of the private developer.

In refreshing our memories back to 1985 when Act 75 was first drafted, we believe that the phrase "no state funds shall be utilized" was inserted due to our concept at that time that any subdivisions developed by this authority would be done solely with private monies. If state funds were utilized, the project could not be exempt from the requirements of public auction.

Information on the State's total appropriations for capital improvement projects to the Hawaiian Home Lands program since statehood is slightly over $189 million as reflected in the attached table. We also wish to point out that: 1) the Department of Hawaiian Home Lands' Hawaiian home general loan fund (§213 (a)(2), HHCA), established by the State legislature to provide loan funds to our homestead lessees, is currently capitalized at approximately $40 million, with approximately $35 million in loans outstanding; and 2) the State has empowered the department with the capacity to guarantee up to $21 million in loans made by government agencies or private lending institutions to our homestead lessees.

We believe that both the state and federal governments share trust responsibilities to this program. The State has made a significant contribution in advancing the objectives of the Hawaiian Homes Commission Act. In comparison, we point out that the federal government has appropriated $2.4 million to this program, of which only $1.2 million has been released thus far.

Questions: Re Act 75, Cost of Lease

Act 75 provides for the leasing of "general leases" at "fair market rent" instead of the traditional $1 per year. What will be the impact of this increased cost on the ability of eligible native Hawaiians to obtain leases? That is, could the higher cost preclude certain beneficiaries from receiving leases?

DHHL Comments

Section 503 sets forth the requirements of the homestead general lease. While the section states that the annual lease rental shall be an amount equal to the fair market rent of the premises, it is important to note that the department is authorized to subsidize lease rents for native Hawaiian homestead general lessees. This provision would permit the department to essentially offer homestead general leases at $1 per year.

Questions: Re Section 503(f)

Section 503(f) permits the lessee to "sublet...sell, assign, transfer or otherwise dispose of...any interest in the homestead general lease...with the prior written consent of the department." Is it correct that, other than the discretion of the department, there is no legal protection against the sale of leases to non-natives and the potential loss of the use of that land by the native community for the remaining term of the lease?

Was any consideration given to limiting the department's discretion in disposing of leases to non-natives? I can understand encumbering the leases to finance improvements, but why authorize the sale of leases to non-natives and real estate developers?

DHHL Comments

It is correct that Section 503(f) permits the lessee to sublet, sell, assign, transfer or otherwise dispose of, or encumber by way of mortgage or otherwise, any interest in the homestead general lease or any improvements erected on the premises with the prior written consent of the department. We point out that what is being disposed of or encumbered is the leasehold estate and not the fee simple title to the lands.

Act 75 was created in the context of the department's recognition of the difficulties lessees faced in financing improvements on the homestead lot due to lenders being unable to place a mortgage lien on homestead properties. The legislation designed a new homestead leasing program to supplement the existing homestead program.

A native Hawaiian would be offered a choice between accepting a homestead general lease which vests in the lessee a certain "bundle of rights" accorded to all leaseholders in the State of Hawaii or a traditional homestead lease with its limited "bundle of rights", including the restriction against encumbering the lease. Under the traditional homestead lease program, the native Hawaiian lessee is dependent on the department to either loan him the funds to develop his improvements or to guarantee/insure loans made by lenders. The lessee's ability to utilize his lot thus depends upon the department being able to set aside the necessary funds for guarantee/insured loans programs and direct loans. Under the homestead general lease program, the native Hawaiian would be able to use his lease and secure a mortgage loan. The lessee would further be able to use his equity in the leasehold estate to secure other types of loans such as home equity loans where the proceeds could be used for other purposes. His homestead lease would afford him the same "bundle of rights" enjoyed by other leaseholders in the State. These rights include 1) the right to possess; 2) the right to use; 3) the right to enjoy; and 4) the right to dispose and encumber.

Native Hawaiians should assume responsibility and authority over their future. The lessee's most tangible asset is the leasehold estate. The homestead general lease program affords the lessee an opportunity to manage this asset. In so doing, the lessee assumes responsibility for the future of his homestead. This new program also provides the means by which private sector lenders can participate in assisting lessees to develop the leasehold.

While it is correct that the leases may be sold or transferred to non-native Hawaiians, we must keep in mind that these decisions are first be made by the native Hawaiian lessee. Secondly, the department is provided with the first right of refusal.

It is also important to understand that homestead leases are disposed for specific uses such as homestead residential, pastoral or agricultural purposes. The common scenario you cite is that the lessee will sell his homestead lease to a big developer, presumably Japanese interests, who in turn will develop luxury hotels and other improvements in the midst of a homestead residental, pastoral or agricultural subdivision. While we agree that this might be possible, we must state emphatically that this scenario is highly improbable. First of all, the character of use as stated in the lease must be adhered to by the purchaser of a homestead general lease. Terns and conditions of the lease will prevail. Secondly, in awareness of the limited amounts of land in general in the State of Hawaii, the state has a highly developed system of land use which classifies all lands in the state into one of four districts, Urban, Agricultural, Rural and Conservation. Individual land uses within Urban districts are controlled solely by the counties. The state amd the counties share in the regulation of land uses within the Agricultural and Rural districts. The State Board of Land and Natural Resources regulates land uses within Conservation districts.

Once established, district boundaries can only be changed through a petition and public hearing process. The counties also impose an equally rigorous process before individual land use changes can be effected. Given the protective nature of Hawaii's land use and zoning laws, it is not likely that a lessee wishing to build an improvement such as a hotel on homestead lands would be able to obtain the necessary governmental approvals. Further, as department approvals are also required, the department would insist that the character of use as stated in the lease be maintained. The character of use as stated in the lease cannot be altered.

The traditional homestead lease program was conceived in the 1920's. Nearly seventy years later, the department recognizes that this program must adjust to the changing times and respond with innovation and creative approaches to resolving the problems of inadequate financing. Act 75 was conceived to provide an alternative leasing structure which would provide the native Hawaiian lessee with a financeable leasehold estate.

We wish to expressly reiterate that nothing under section 503 authorizes the department to dispose of a homestead general lease directly to a non-native Hawaiian.

Questions: Re Section 503(a)

Section 503(a) provides for initial lease terms of up to 55 years, and extensions for up to a total of 75 years. Given that leasehold interests can be bought, transferred or acquired by non-natives in a variety of ways, isn't it possible that much of the developed home lands could become unavailable to the native Hawaiian community for much of this 75 year term?

(Note: The Act provides the department the discretionary authority to disapprove certain types of transactions. However, there is no department approval needed to buy title to a lease upon foreclosure of a mortgage.)

DHHL Comments

It is correct that a homestead general lease may be transferred or sold. That right to dispose and encumber is among the "bundle of rights" conferred upon the native Hawaiian in his homestead general lease.

We do not agree with the statement that this program will result in that "much of the developed home lands could become unavailable to the native Hawaiian community for much of the 75 year term." While there will probably be some lessees who will choose to sell or transfer their interest, we do not feel that an exorbitantly high number of lessees will exercise this option. The lessee must find a buyer who is willing to accept the terms and conditions of the homestead lease. Despite the flexibility granted in the homestead general lease, the real estate market will likely be limited to those who are interested in residing within Hawaiian homestead subdivisions. Further, the department is provided with the first right of refusal.

Questions: Re Section 503(b)

Section 503(b) requires that annual lease rent shall be "equal to fair market rent." How is this "fair market rent" determined--is it on a cost basis, or "whatever the market will bear?" Given that native Hawaiians generally have fewer financial resources than other groups within the population, and given that a leaseholder may sell his leasehold interest to any person, doesn't it follow that leaseholds will eventually end up in the hands of those with greater financial resources?

DHHL Comments

Fair market rent is determined by independent appraisal. While appraisers use various approaches in determining fair market value, the most commonly used approach is the market data approach. The market data approach is based on the principle of substitution, by which the price of a property will not generally exceed the cost necessary to acquire a similar substitute property of equal desirability which is readily available on the open market. Other approaches in determining value are the cost approach and the income approach.

We again call to your attention that Section 503(b) also authorizes the department to subsidize lease rents for native Hawaiian homestead general lessees. Exercise of this authority by the department could allow a $1 a year lease rental for native Hawaiian homestead general lessees.

We do not agree with your generalization that these leaseholds will eventually end up in the hands of those with greater financial resources. The department is provided with the first option to purchase the lease and it is more probable than not that we would exercise this authority.

Questions: Re Act 75, Leases to the General Public and Section 506 - Lease Awards

Act 75 authorizes the granting of leases to the general public "after all interested and qualified native Hawaiians have been awarded lots or units." Given the waiting list of approximately 19,000 native Hawaiians, how likely is it that "all interested and qualified native Hawaiians" will be awarded lots in the forseeable future?

Could severe economic disadvantage result in an eligible native Hawaiian being found either "uninterested" or unqualified" under this section of Act 75?

Section 506(c) authorizes the department to "temporarily" dispose of lots or units to the general public if such lots or units are available after all "interested and qualified native Hawaiians have been awarded lots." What is meant by "temporarily?" As a legal question, can a lessee from the "general public" obtain leases of up to 75 years?

What specifically is meant by the term "interested and qualified native Hawaiians?" How are such natives different than those eligible for leases under the current program?

DHHL Comments

Section 506(c) authorizes the department to temporarily dispose of remaining lots or units in subdivisions created under this title at fair market value to the general public with preference to native Hawaiians. This condition was included in the event the department found itself with available units after all interested and qualified native Hawaiians were awarded lots. This section would authorize the department to dispose of the lots on a temporary basis and derive fair market income. The key word here is "temporary." Temporary is defined by Webster as " lasting for a limited time." In the context of Act 75, a lot is "temporarily disposed" for such time that no qualified native Hawaiian expresses interest in such lot. This temporary disposition would be made by way of rental agreements. This would ensure that units do not sit idle and allow the department to derive income from its temporary use until such time that qualified native Hawaiians express interest in such units.

The department's goal is to place approximately 16,000 native Hawaiian families on Hawaiian home lands by the year 2000. Approximately $1 billion is needed to realize this goal. Reaching this goal to award lots to all interested and qualified native Hawaiians in the foreseeable future will not be possible without significant levels of financial contributions from both the state and federal governments.

Section 503 sets forth the requirements of the homestead general lease. While Section 503(b) states that the annual lease rental shall be an amount equal to the fair market rent of the premises, it is important to note that the department is authorized to subsidize lease rents for native Hawaiian homestead general lessees. This provision would allow the department to effectively subsidize the lease rent for all but $1 per year.

Section 504 provides for the qualifications of lessees. There are only two qualifications: 1) the lessee is a native Hawaiian and 2) the lessee is not less than eighteen years of age. This is consistent with eligibility requirements for traditional homestead leases as expressed in Section 208(1).

If an applicant is indeed a native Hawaiian (not less than 50% blood) and at least eighteen years of age, he would be found qualified for this program. If the applicant is not interested in this program, options are still available under the traditional homestead lease program. What is important is that the applicant is given the opportunity to exercise his choice to select a lease under the traditional homestead program or a lease under this new homestead general lease program.

To your question regarding possible "severe economic disadvantages", we point out that under either the traditional homestead program or the alternative homestead general lease program, if the award is made of a lot with an existing indebtedness, as it must under Sections 209 and 215, the native Hawaiian must, under either program, assume that financial indebtedness.

Questions: Re Section 508 - Transfer of Leases Upon Foreclosure

Section 508 provides that title to general leases, or improvements, "may be transferred...by law" upon foreclosure. It further provides that:

> "Individuals, partnerships, corporations or agencies of government, disqualified under the Act to take a lease for homestead purposes, may succeed and take title to a homestead general lease and the improvements...by transfer or by purchasing at or after a sale upon a foreclosure of a mortgage..."

This section provides an opportunity for general leases to be alienated from the eligible native Hawaiian population, at least through the remaining term of that lease. Was consideration given to restricting the transfer or sale of general leases to only the department, or to other eligible native Hawaiians?

Is there a reason such a protection against alienation should not be adopted?

DHHL Comments

If homestead general leases contained provisions to restrict its transfer or sale, there would be a negative effect on its financeability. If restrictions that transfers to only native Hawaiians were made, these conditions would raise questions by private lenders regarding conflicts with discrimination and civil rights laws. The homestead general leases would not be financeable.

The homestead general lease program was designed to create a new type of lease that could be secured by mortgages. This would enable the lessee to use his leasehold estate and obtain private sector financing. This mechanism was viewed as a creative and bold response to alleviating the financing constraints on the department. For the first time in its history, lessees would play a direct role in managing their leasehold.

Questions: Re Section 512 -Restrictions on Waivers

Section 512(a)(2) provides that, after ten years, "the department shall have the first option to purchase the improvements on the lot at a price not to exceed the appraised value of the improvements."

I am concerned that this provision could effectively lead to "perpetual" leases. For example, let us assume that a developer acquires a lease by sale, or transfer upon foreclosure, and obtains permission to build a major development. At the end of the term of the lease, decades later, the department may not have the funds to buy out the developer's interests. I assume the developer can continue to exercise his rights under the lease. Is this correct?

(Note: In this hypothetical case the department could have administratively blocked the sale of a lease, or blocked a specific building project. However, there is no legal bar to the department approving such actions. Remember, millions of yen would likely be involved.)

DHHL Comments

We feel the concern that Section 512(a)(2) could lead to perpetual leases is simply not valid. This premise is based on the assumption that a developer, presumably Japanese, will acquire a homestead general lease, obtain approvals to build a major development (hotel) on the leasehold and that the department will not have the funds to purchase the improvements upon the expiration of the lease term. This premise assumes the following:

1. That the department will approve a major development (hotel construction) on a homestead lot within an existing residential or agricultural zoned subdivision.
2. That Hawaii's zoning and land use laws are such that such developments can be built within subdivisions with residential or agricultural zoning; and
3. That the department will have to purchase the improvements from the lessee upon the expiration of the lease.

In response to assumptions nos. 1 and 2, it would be virtually impossible for any lessee to secure a zoning change of his homestead parcel within an existing subdivision without the approval of the landowner (DHHL). The zoning change process involves extensive public input and review. It is unlikely that the department, the State's Land Use Commission or the counties would consent to such a contrary request.

In response to assumption no. 3, no compensation is owed to the lessee on his improvements upon the termination of his lease term.

One needs to understand the features of real estate in Hawaii. The leasehold method of land use is predominant in Hawaii, with between 88% to 96% of all non-governmental fee simple land is occupied under lease. Leaseholds are treated by many state statutes as real property. In leaseholds, the lessee obtains full use of the land but never owns it. He rents it, in effect, for an annual sum. (In the private sector, this amount is usually computed as a percentage of the appraised valuation; for homestead lessees, the lease rent is set by the Act at $1.00 a year.) The lessee pays property taxes and usually has the right to sell the lease and to remove any improvements he has made when the lease expires.

Reversion is the residue of an estate left to the lessor after the termination of all prior estates and interests; it is the right of a lessor to receive possession of leased property upon the termination of a lease with all subsequent rights to use and enjoy the property. Most leases in Hawaii contain provisions concerning this reversionary interest or present right to future possession of an estate.

Most private sector lessors provide for the lessee to surrender possession of the premises and improvements to the lessor upon the termination of the lease. Some lessors provide that the lessee remove any improvements made upon termination. The lessee's ability to remove his improvements, however, may not be practical or possible, depending upon the type of improvement constructed.

In the leases issued by the department in its industrial and commercial leasing program, we provide that all improvements pass to the department upon the termination or expiration of the lease. This provision will also be applied to our homestead general lease provisions. Attached are sample forms of a traditional homestead lease and a general lease used in our income leasing program.

We point out that under the traditional homestead lease program, upon cancellation or surrender of the homestead lease, the department is required to appraise and pay out the net proceeds (the difference between the appraised value of the improvements and the indebtedness to the department) to the outgoing lessee. Section 512 is an attempt to incorporate that concept with limitations.

Questions: Re Section 513 - Departmental Approval

Section 513 requires the approval of the department for any sale of improvements on lots covered by a general lease. Does such approval by the department apply under Section 508? (508 specifically authorizes "non-native" interests to take title of leases and improvements upon foreclosure of a mortgage.)

Was consideration given to enacting limitations on the authority of the department to approve non-residential development on leases controlled by non-natives?

DHHL Comments

Yes, departmental approvals also apply under Section 508. The approval would be in the form of a consent agreement, such as a consent to assignment or consent to sublease.

We are confused by your question as to whether consideration was given to enacting limitations on the department's authority to approve non-residential development on leases controlled by non-natives. Please keep in mind that irrespective whether homestead general leases are controlled by native Hawaiians or others by reasons of transfer or sale, the character of use of the leasehold must conform to the terms of the lease. If a residential homestead general lease was issued, the leasehold can only be used for residential purposes. The commission would be in violation of the terms of the lease if it approved non-residential development on a residential lease.

Questions: Re Act 75

Do you agree that Act 75 does not legally preclude potential alienation of leases, and do you believe that additional legal protections are necessary?

Would you be willing to work with Interior and Committee staff to work out refinements to this Act to provide greater protections?

DHHL Comments

Yes, we agree with your statement that Act 75 does not legally preclude potential alienation of leases. The primary purpose of Act 75 is to provide an alternative to our present traditional homestead leases which are inalienable and allow our lessees to secure private financing.

We do not believe that additional legal protections are necessary beyond what is already provided for in the legislation. To do so may defeat the purposes of the homestead general lease program.

We believe that Act 75, as passed by the State of Hawaii, needs no further refinement. However, we are willing to work with your Committee to refine the bill, provided that the purposes for which Act 75 was originally proposed are not compromised.

ATTACHMENTS

1. Chapter 171-60, Hawaii Revised Statutes
2. Table on State Appropriations to Hawaiian Home Lands Program
3. Sample Traditional Homestead Lease
4. Sample General Lease for Income Leasing Program

the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

(b) Disposition of public lands for airline, aircraft, agricultural processing, cattle feed production, marine, and maritime operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

(1) The disposition encourages competition within the aeronautical, agricultural, and maritime industries;

(2) The disposition shall not exceed a maximum term of thirty-five years; and

(3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purpose of this subsection "agricultural processing" means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii. [L 1962, c 32, pt of §2; Supp, §103A-56; am L 1967, c 189, §6; HRS §171-59; am L 1970, c 101, §2; am L 1980, c 48, §1; am imp L 1984, c 90, §1 and am L 1984, c 278, §1]

§171-60 Development through private developer. (a) Leasehold projects. Notwithstanding anything in this chapter to the contrary, the board may, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the legislature by concurrent resolution approving a development project, such concurrent resolution to be adopted by each house no earlier than forty-eight hours after printed copies thereof have been made available to members of that house, (1) lease public lands, including submerged lands to be reclaimed at the developer's or developers' expense, to a private developer or developers, or (2) enter into a development agreement with a private developer or developers, for development and subdivision of such lands as a leasehold project for agricultural, industrial, single-family or multiple-family residential, commercial, business, or hotel and resort uses, as provided in this subsection.

Prior to leasing any public land to, or entering into a development contract with, a developer or developers, the board shall:

(1) Determine:
    (A) Whether the lands shall be developed by disposition or contract;
    (B) The location, area, and size of the lands to be developed;
    (C) The use or uses to which the lands shall be put, which shall be in conformity with the applicable state, city and county, or county zoning and subdivision laws, ordinances, or regulations;
    (D) The estimated period of time to construct and complete the development;

(E) Minimum requirements for on-site and off-site improvements, if any;

(F) Whether any beach rights-of-way or public game preserves should be established: and

(G) Such other terms and conditions as shall be deemed necessary by the board.

(2) Set the minimum rental of the lands to be developed on the basis of an appraisal report prepared by an appraiser for the board determining the fair market value of the lands to be developed.

(3) Give notice of the proposed disposition or contract by publication at least once in each of three successive weeks in a newspaper of general circulation in the State and in addition in a newspaper of general circulation in the appropriate county, if the land is situated in the first, second, and fourth districts. Such notice shall invite interested persons to submit applications to be selected as the developer or developers for the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location, and minimum rental of the area to be leased to the developer or developers, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the disposition or contract may be secured by interested persons.

Each applicant shall include, together with the applicant's sealed bid, a financial statement, and performance and experience records in real estate development; provided that the board may also, in its discretion, require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant's sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: the applicant's proposal as to how and when the applicant intends to develop the land, including any permitted incremental development, the amount of money the applicant intends to commit to the total project, the method of recovery of the applicant's costs and profits, the amount the applicant agrees to pay to lease or contract to develop the land, and the income the State will receive from leases.

(4) Establish reasonable criteria for the selection of the private developer or developers.

(5) Determine within forty-five days of the last day for filing applications the applicant or applicants who meet the criteria for selection set by the board, and notify all applicants of its determination within seven days of such determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the board of any objections and the grounds therefor, in writing, within ten days of the receipt of such notice, the applicant shall be barred from

proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection as the developer, the board then may negotiate the details of the disposition of such public lands to, or enter into a development contract with, the developer; provided that the terms of the disposition or contract shall not be less than those proposed by the developer in the application and shall be subject to the concurrence of the governor. If two or more applicants meet the criteria for selection, the board shall consider all of the relevant facts of the disposition or contract, the proposals submitted by each applicant, the experience and financial capability of each applicant, and shall within forty-five days from the date of selection of the applicants that met the criteria, select the applicant who submitted the best offer. The board then may negotiate the details of the disposition of such public lands or enter into a development contract with the developer; provided that the terms of the disposition or contract shall not be less than those proposed by the developer in the application and shall be subject to the concurrence of the governor.

The terms of any disposition or development contract shall include the following, wherever appropriate:

(A) The development and subdivision shall comply with appropriate state, county, and city and county zoning and subdivision requirements.

(B) The developer or developers shall file with the board a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the disposition or development contract.

(C) The use or uses to which the land will be put. Development of large, though economic, tracts of land with multiple but complementary uses should be encouraged.

(D) The dates on which the developer must submit preliminary plans and final plans and specifications for the total development to the board for approval, which approval shall not be arbitrarily or capriciously withheld. No construction shall commence until the board has approved the final plans and specifications; provided that with board approval construction on an incremental basis may be permitted.

(E) The date of completion of the total development, including the date of completion of any permitted incremental development.

(F) The minimum requirements for off-site and on-site improvements that the developer must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development.

(G) In the event of a lease the developer may be permitted, after the developer has completed construction of any required off-site improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any required off-site improvement has been completed to a purchaser or sublessee who shall assume the obligations of the developer relative to the parcel being assigned or subleased, including the construction of any on-site improvement. The board may permit a developer to share in the lease rent for a fixed period in order to recover costs and profit.

(H) A development agreement may provide that the board shall issue a lease to the nominee or nominees of the developer, including the developer, pursuant to the terms previously negotiated and agreed upon between the developer and the board, including the lease rent to the lessee and the method of recoupment of expenses and profit by the developer.

(I) The board shall lay out and establish a number of rights-of-way from proposed or established highways to the public beaches and game preserves in order that the right of the people to utilize the public beach or beaches and public game preserves shall be protected.

Prior to leasing or entering into any development contract, the board shall determine the feasibility of hunting on such lands, and if any of them is suitable for hunting or may during the term of the lease become suitable for hunting, the board may reserve such lands as game preserves. Where the board finds that hunting on such lands would not be consistent with the rights of the lessee or for other good cause, the board need not reserve such lands as game preserves.

The cost of such rights-of-way and any fencing which may be required shall be borne by the State, lessee, or jointly as the board may deem appropriate prior to the leasing of such lands.

In any disposition of beach-front lands, the board shall give consideration to the needs of the public for beach area above and below the high-water mark.

(J) The board may include in any development contract or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in sections 171-20, 171-21, and 171-22, respectively.

(K) Such other terms and conditions set by the board.

The term "developer" as used in this subsection shall mean a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for single-family, multiple-family, industrial, hotel and resort, business commerical, or agricultural uses and has the financial ability satisfactory to the board to develop and subdivide land.

(b) Fee simple residential development. Notwithstanding anything in this chapter to the contrary, the board may, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the legislature by concurrent resolution approving the development project, such concurrent resolution to be adopted by each house no earlier than twenty-four hours after printed copies thereof have been made available to the members of that house, dispose of public lands, including submerged lands to be reclaimed at developer's or developers' expense, by sale of the fee, for single-family or multiple-family residential uses, as provided in this subsection.

Prior to the sale in fee of any public land to a developer or developers, the board shall:

(1) Determine (A) the location, area, and size of the lands to be developed; (B) the use or uses to which the lands shall be put, which shall be in conformity with the applicable state, city and county or county zoning and subdivision laws, ordinances or regulations; (C) the estimated period of time to construct and complete the development; (D) minimum requirements for on-site and off-site improvements, if any; (E) whether any beach rights-of-way or game preserves should be established; and (F) such other terms and conditions as shall be deemed necessary by the board;

(2) Set the minimum sale price of the lands to be developed on the basis of an appraisal report prepared by an appraiser for the board determining the fair market value of the lands to be developed;

(3) Give notice of the proposed disposition by publication at least once in each of three successive weeks in a newspaper of general circulation in the State and in addition in a newspaper of general circulation in the appropriate county if the land is situated in the first, second, and fourth districts. Such notice shall invite interested persons to submit applications to be selected as the developer or developers for the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location and minimum sale price of the area to be sold to the developer or developers, the minimum requirements for any required off-site and on-site improvements, the maximum estimated period of time to install and complete the construction of any required improvements, the use or uses to which such lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the disposition may be secured by interested persons.

Each applicant shall include, together with the applicant's sealed bid, a financial statement and the applicant's performance and experience records in real estate development, provided that the board may also, in its discretion, require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant's sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: the applicant's proposal as to how and when the applicant intends to develop the land, including any permitted incremental development, the amount of money the applicant intends to commit to the total project, the method of recovery of the applicant's costs and profits, and the amount the applicant agrees to pay to purchase the land;

(4) Establish reasonable criteria for the selection of the private developer or developers;

(5) Determine within forty-five days of the last day for filing applications, the applicant or applicants who meet the criteria for selection set by the board, and notify all applicants of its determination within seven days of such determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the

board of the applicant's objections and the grounds therefor, in writing, within ten days of the receipt of such notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria; and

If only one applicant meets the criteria for selection as the developer, the board may then negotiate the details of the disposition of such public lands to the developer; provided that the terms of the disposition shall not be less than those proposed by the developer in the developer's application and shall be subject to the concurrence of the governor. If two or more applicants meet the criteria for selection, the board shall consider all of the relevant facts of the disposition, the proposals submitted by each applicant, the experience and financial capability of each applicant and shall within forty-five days from the date of selection of the applicants that met the criteria, select the applicant who submitted the best offer. The board may then negotiate the details of the disposition of such public lands with the developer; provided that the terms of the disposition shall not be less than those proposed by the developer in the developer's application and shall be subject to the concurrence of the governor.

The terms of the disposition shall include the following:

(A) The development and subdivision shall comply with appropriate state, county, and city and county zoning and subdivision requirements.

(B) The developer or developers shall file with the board a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants and conditions of the disposition.

(C) The use or uses to which the land will be put.

(D) The dates on which the developer must submit preliminary plans and final plans and specifications for the total development to the board for approval, which approval shall not be arbitrarily or capriciously withheld. No construction shall commence until the board has approved the final plans and specifications; provided that with board approval construction on an incremental basis may be permitted.

(E) The date of completion of the total development, including the date of completion of any permitted incremental development.

(F) The minimum requirements for off-site and on-site improvements that the developer must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development.

(G) The title to the land shall remain in the State until the purchaser has made all payments required in the terms of the sale and has constructed the improvements as agreed; provided that the developer may assign, with the approval of the board, the developer's sales agreement with the board as security for a loan to finance the balance of or a part of either the purchase price of the land or the cost of improvements, or both; provided further that if incremental development is permitted and the developer has completed construction of the required improvements in the increment and is able to pay or has paid for the agreed purchase price of the land within the increment, then the developer shall be entitled to a land patent or a deed to the land within such completed increment.

(H) The board shall lay out and establish over and across such lands a reasonable number of rights-of-way from proposed or established highways to the public beaches and game preserves in order that the right of people to utilize the public beach or beaches and public game preserves shall be protected.

The board may provide for the reservation of any lands within the lands to be disposed as game preserves if the board determines the establishment of such game preserves to be in the public interest.

The cost of such rights-of-way and fencing which may be required shall be borne by the State, developer or jointly as the board may deem appropriate prior to the disposition of such lands.

In any disposition of beach-front lands, the board shall give consideration to the needs of the public for beach area above and below the high-water mark.

(I) The board may include in any sales agreement provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in sections 171-20, 171-21 and 171-22, respectively.

(J) Such other terms and conditions set by the board.

The term "developer" as used in this subsection means a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for single-family or multiple-family residential uses and has the financial ability satisfactory to the board to develop and subdivide land. [L 1965, c 239, §39; Supp, §103A-56.1; HRS §171-60; am L 1968, c 68, §2; am L 1970, c 83, §§3, 4; am L 1981, c 199, §3; am L 1983, c 178, §2; am imp L 1984, c 90, §1]

§171-61 Cancellation, surrender. When public land is disposed of with a building requirement and, thereafter, prior to the erection of the building, the land becomes or is discovered to be unfit for the erection of the building, or by change of conditions it becomes impossible or impractical to erect the building, the board of land and natural resources may cancel the disposition, repossess the land, and return to the party from the special land and development fund, notwithstanding the order of priority set forth, the aggregate amount of principal and interest theretofore paid by the party.

Whenever land or a portion thereof under lease can be re-leased or sold for a higher and better use, or for the existing use to a greater economic benefit to the State, the board, subject to the consent of the lessee, the lessee's successors, or assigns, and each holder of record having a security interest, may cancel the lease without compensation to the lessee or withdraw a portion of the land from the lease and re-lease or sell the same; provided that in the event of withdrawal of a portion, the board may in its discretion allow a proportionate reduction in rent; and provided further that in the event buildings and improvements have been erected by the lessee, as permitted under the lease, on the land or portion

State Appropriations to the Hawaiian Home Lands Program

Fiscal Year		State Appropriations
61-62	$	245,000
62-63		350,000
63-64		167,700
64-65		140,000
65-66		176,000
66-67		500,000
67-68		405,000
68-69		770,000
69-70		1,572,000
70-71		1,525,000
71-72		1,775,000
72-73		3,835,300
73-74		4,194,000
74-75		11,157,000
75-76		22,380,500
76-77		52,000
77-78		6,593,000
78-79		7,635,000
79-80		7,877,000
80-81		10,695,000
81-82		6,220,000
82-83		6,200,000
83-84		870,000
84-85		3,145,000
85-86		210,000
86-87		9,515,000
87-88		12,885,000
88-89		10,875,803
89-90		27,285,436
90-91		29,781,827
Total	$	189,032,566

STATE APPROPRIATIONS/EXPENDITURES
OF THE HAWAIIAN HOME LANDS PROGRAM
FISCAL YEAR 1973-74 - PRESENT

Fiscal Year	Amount	Expenditure	Breakdown of Expenditures CIP	Operating
73-74	$ 4,194,000	$ 364,453	$ 364,453	$
74-75	11,157,000	1,708,855	1,708,855	
75-76	22,380,500	10,178,794	10,178,794	
76-77	52,000	4,956,003	4,956,003	
77-78	6.593,000	10,440,291	10,440,291	
78-79	7,635,000	2,121,460	2,121,460	
79-80	7,877,000	11,298,587	11,298,587	
80-81	10,695,000	6,115,802	6,115,802	
81-82	6,220,000	5,781,399	5,781,399	
82-83	6,200,000	7,821,498	7,821,498	
83-84	870,000	4,446,721	4,446,721	
84-85	3,145,000	2,235,673	2,235.673	
85-86	210,000	857,412	857,412	
86-87	9,515,000	2,119,113	2,119,113	
87-88	12,885,000	12,885,000 *	12,885.000 *	
88-89	10,875,803	10,782,000 *	9,903,000 *	879,000
89-90	27,285,436	27,285,436 **	24,233,000 **	3,052,436 *
90-91	29,781,827	29,500,000 **	26,500,000 **	3,281,827 **
Total	$ 177,571,566	$ 150,898,497	$143,967,061	$ 7,213,263

*These funds will lapse on June 30, 1990. The department expects to encumber all funds appropriated by this date.

**These funds will lapse on June 30, 1992. The department expects to encumber all funds appropriated by this date.

WANG DOC. NO. 2916I
REVISION DATE: 08/01/89 BY:LC
APPROVED:______________ DATE:__________
IPD
______________ DATE:__________
Legal
RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL ( ) PICKUP ( )
REQUESTOR TO FILL ABOVE. SPACE ABOVE THIS LINE FOR REGISTRAR'S USE.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _____

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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. ______

THIS INDENTURE OF LEASE, made this _______ day of ____________________, 19____, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 335 Merchant Street, Honolulu, Hawaii, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called the "LESSOR," and ____________ ____

whose ____

and post office address is ________________________________

____, hereinafter called the "LESSEE."

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises known as Lot ______, comprising ____________ square feet of Hawaiian Home Lands ________________________, Hawaii, Tax Map Key No. __________________, more particularly described in Exhibit "A", and shown on the map marked Exhibit "B", both attached hereto and made a part hereof.

3. Determination of rental upon reopening of the annual rental. The rental for each period to be reopened and redetermined shall be the fair market rental at the time of reopening. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor; provided, that should the Lessee fail to agree upon the fair market rental as determined by the Lessor's appraiser, the Lessee shall promptly appoint its own appraiser and give written notice thereof to the Lessor, and in case the Lessee shall fail to do so within ten (10) days after being advised of the fair market rental as determined by the Lessor's appraiser, the Lessor may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the demised premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure to do so within ten (10) days after appointment of the second appraiser, either party may have the third appraiser appointed by such judge and the fair market rental shall be determined by arbitration as provided in Chapter 658, Hawaii Revised

ensuing period has not been determined prior to the expiration of the preceding rental period, the Lessee shall continue to pay the rent effective for the previous rental period, but the Lessee shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

4. Waiver of Rental. The Lessor in consideration of the requirement that the Lessee place substantial improvements on the demised premises as well as the off-site improvements required under Article Two, Section 21, within the first thirty (30) months from the Lessor's approval of plans referred to in Article Two, Section 21, shall waive the rental in an amount equal to one (1) year's annual lease rental for the following calendar year, after completion of the construction of improvements in accordance with Article Two, Section 21. If, however, during the period for the construction of improvements per Article Two, Section 21, of this lease, the Lessee determines that because of a change of conditions it is impossible or impractical to construct such improvements, the Lessee may terminate this lease; provided, however, that in the event the Lessee shall exercise this right to terminate, the waiver

ARTICLE ONE

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

   a. All minerals as hereinafter defined, in, on, or under the demised premises, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in other than a public use, which demised premises shall, at the time of withdrawal, constitute an economic unit, provided, that, the portion not withdrawn shall also be an economic unit. The right to withdraw reserved under this paragraph 3 shall be exercised only after a minimum one (1) year prior written notice is given to the Lessee. The Lessee will be entitled to compensation for those improvements made by the Lessee which have been approved by the Lessor, on any portion of the demised premises withdrawn, in an amount equal to the fair market value thereof, less any credits which are to be or have been applied to the lease rental, as provided herein. If only a portion of the demised premises is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the demised premises withdrawn.

ARTICLE TWO

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of rent. That the Lessee shall pay the rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above,

4. Issuance and relocation of utility easements. That the Lessee may request an easement for utility purposes or relocation of an existing utility easement and, if so approved by the Lessor, shall pay all costs related to the issuance and installation of a new utility easement or relocation of an existing utility easement. The Lessor may issue utility easements or relocate existing utility easements without the Lessee's approval as long as the issuance or relocation does not unreasonably interfere with the Lessee's use of the premises. The Lessor shall pay for all costs related to the issuance and installation of a new utility easement or relocation of an existing easement, unless the issuance or relocation is being done at the request of a utility company, in which case the utility company shall pay all the costs related thereto.

5. Sanitation, etc. That the Lessee shall keep the demised premises and improvements thereon in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of demised premises. That the Lessee shall not strip or commit, suffer or permit to be committed any waste, or nuisance, or unlawful, improper or

nonstructural alterations not exceeding $5,000 in cumulative costs per alteration during the term of this lease without the Lessor's consent.

10. Repairs to improvements. That the Lessee shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. That the Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, except as herein expressly provided, and will indemnify and hold the Lessor harmless against all loss, costs and expenses including reasonable attorney's fees with respect thereto.

12. Character of use. That the Lessee shall use the demised premises solely for limited industrial purposes and such other purpose as is permitted under the existing zoning regulations; provided, however, no construction of any residential structure shall be permitted, except by prior

improvements; provided further that prior to the approval of any assignment of lease, the Lessor shall have the right to review and approve the consideration paid by the assignee and, may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;

14. Subletting. That the Lessee shall not rent or sublet the whole or any part of the demised premises except with the prior written approval of the Lessor; provided that prior to the approval, the Lessor shall have the right to review and approve the rent to be charged to the sublessee; provided further that the Lessor shall have the right to review and, if necessary, revise the lease rental of the demised premises based upon the rental rate charged to the sublessee and provided that the base rental may not be revised downward. If this paragraph is violated, the Lessee shall relinquish all sublease rentals collected from the demised premises, besides continuing to pay the effective base lease rental to the Lessor; and including all litigation expenses incurred in accordance with paragraph 17, infra.

17. Costs of litigation. That in case the Lessor shall without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

18. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire term of this lease, a policy or policies of comprehensive public liability insurance, with an insurance company or companies licensed to do business in the State, naming the Lessor as additional assured, in an amount acceptable to the Lessor, insuring the Lessor and the Lessee against all claims for personal injury, death and property damage; that the policy or policies shall cover the entire demised premises, including all buildings and other improvements and grounds and all roadways or sidewalks on or

rental reopening date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by the Lessee alone as obligor, if, in lieu of any surety or sureties, the Lessee shall also furnish and at all times thereafter keep and maintain on deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or executed and deliver to the Lessor a deed or deed of trust of real property, all of such character as shall be satisfactory to the Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities, if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those commencement date of the lease. The Lessee shall have thirty (30) months from the date of the Lessor's approval of the plans to complete any necessary construction in order to implement the plans. All construction will be done with new materials and in full compliance with all laws, ordinances, rules and regulations of the federal, state and county governments. The total cost of the building and other improvements shall not be less than $75,000.00.

22. Bond and financial information. That the Lessee will before commencing construction of any improvements on the demised premises deposit with the Lessor a bond or certificate thereof, in a penal sum equal to the construction cost of the improvements and in form and with surety satisfactory to the Lessor, guaranteeing the completion of the construction of improvements free and clear of all mechanics' and materialmen's liens, together with such information and evidence as the Lessor may reasonably require to assure that the Lessee is able to and will make all payments required by contract to be made as and when the Lessee is required to do so.

23. Termination. That at the end of or earlier termination of this lease, the Lessee shall,

therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Lessor or its designated representative; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to retain the balance of the proceeds.

26. Abandonment by Lessee. The Lessee agrees that should the Lessee breach this lease and abandon the demised premises, this lease shall continue in effect so long as the Lessor does not terminate the lease or the Lessee's right to possession; and the Lessor may enforce all of its rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease; and further, that the Lessor need not mitigate its damages in the event the Lessee

lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be assignable in accordance with the provisions herein. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

2. Breach. That time is of the essence of this agreement and if the Lessee shall become bankrupt, or shall abandon the demised premises, or if this lease and the demised premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to

prejudice to any other remedy or right of action for arrears of rent and interest at the legal rate pursuant to Section 478, Hawaii Revised Statutes, or for any preceding or other breach of contract; and in the event of such termination, all buildings and other improvements thereon shall remain and become the property of the Lessor.

3. Rights of holder of record of a security interest. In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants and conditions herein contained on the Lessee's part to be performed, capable of performance by the holder, as determined by the Lessor, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within the additional period as the Lessor may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal the amount of the

may still hope otherwise to resolve the problems created by the breach or default involved. Section 171-19, Hawaii Revised Statutes to the contrary notwithstanding, the proceeds of any redisposition under the terms of this provision and Section 171-21, Hawaii Revised Statutes, shall be applied: first, to reimburse the Lessor for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the interest or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redisposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of this lease, interest, or estate.

4. Condemnation. That, if at any time, during the term of this lease, or any portion of the demised premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the demised premises condemned. The Lessee shall be entitled to receive from the

5. Right to enter. The Lessor and agents or representatives thereof shall have the right to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the demised premises.

6. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of the demised premises prior to such proposed disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than two years before the expiration or termination of this lease.

individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to the Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

12. Interest, costs and fees. Any and all amount owing by the Lessee to the Lessor under the terms of this lease shall carry interest from the date the same becomes due until paid at the rate of interest of one percent (1%) per month. In case of any default by the Lessee in the performance of the terms, covenants and conditions herein contained, the Lessee shall pay to the Lessor any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, the Lessee shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

13. Definitions. As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC AT ITS MEETING HELD ON	State of Hawaii DEPARTMENT OF HAWAIIAN HOME LANDS
______________________	
APPROVED AS TO FORM:	By______________________ Chairman Hawaiian Homes Commission
	LESSOR
______________________ Deputy Attorney General State of Hawaii	______________________
	By______________________ Its
	By______________________ Its
	LESSEE

STATE OF HAWAII

Department of Hawaiian Home Lands

...Lot Lease

No. ....

WHEREAS, certain Hawaiian home lands situate on the Island of .... have been surveyed, set apart and opened for settlement by native Hawaiians, pursuant to the provisions of the Hawaiian Homes Commission Act, 1920, as amended, hereinafter referred to as the "Act";

WHEREAS, ..., hereinafter called the "Lessee," has duly sworn under oath in Lessee's application for a lease that Lessee is a native Hawaiian as defined in the Act, and is not less than eighteen (18) years of age; and

WHEREAS, the STATE OF HAWAII, by its Department of Hawaiian Home Lands, hereinafter called the "Lessor," has selected the Lessee as a suitable and proper person to whom a lease of Hawaiian home lands may be issued;

NOW, THEREFORE, the Lessor, in consideration of the rent hereinafter reserved and of the terms, covenants and conditions herein contained and on the part of the Lessee to be observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire, for terms to commence as hereinafter set forth and subject to all of the conditions and obligations imposed by the Act, the following described premises:

SUBJECT to all easements shown on the map (if any) hereto attached or above referred to, and reserving unto Lessor within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

TO HAVE AND TO HOLD the demised premises unto said Lessee for a term of ninety-nine years, commencing on the

.... day of ...., 19................, up to and including the .... day of

...., ..., unless sooner terminated as hereinafter provided.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on, or under the land; provided, that "minerals" shall not include sand, gravel, rock or other materials suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved.

2. Prehistoric and historic remains. All prehistoric and historic remains found on said demised premises.

3. Withdrawal. The right to withdraw from the operation of this lease the whole or any part or portion of the lands demised hereby, and any interest therein as in the exclusive judgment of the Lessor may be required for a public use and purpose or for the orderly and progressive development of the rehabilitation project of which the lands herein demised form a part; provided, however, no compensation or damages shall be payable to the Lessee for or by reason of such withdrawal, save and except that the Lessee will be entitled to compensation for the fair market value, determined as of the time of withdrawal, of all improvements placed by Lessee on said premises and affected by such withdrawal.

4. Rights of way for roads, wire lines, etc. The Lessor hereby reserves to itself, its successors, or (and) assigns forever the privilege of fixing and using such rights of way across the said lot or lots as may be, in the judgment of the Lessor, from time to time necessary for roads, trails, ditches, conduit pipelines, tunnels, wire lines — unlimited by the specification just made — any purpose whatsoever; provided, however, that, in the exercise of this privilege, the Lessee, or successor, or successors, thereof in interest, shall be compensated for all damages suffered thereby.

THE PARTIES HEREIN AGREE AS FOLLOWS:

5. Payment of rent. The Lessee shall pay to the Lessor at its office in Honolulu, City and County of Honolulu, State of Hawaii, or to such of its agents and at such other place or places as the Lessor may from time to time designate, rent in the sum of

.............................—ONE DOLLAR—.. ($ ....1.00.......), a year, payable in legal tender of the United

States of America in advance on the .... day of .... of each and every year, without any deduction and without any notice or demand.

6. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, except as provided in Section 208(7) of the Act, and all rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become

liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

7. Utility services. The Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

8. Sanitation, etc. The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

9. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises.

10. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the said premises, now in force or which may hereinafter be in force. Lessee will observe any setback lines affecting said premises as shown on the map (if any) hereto attached or herein mentioned in the description of said premises, and will not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of said premises and the setback line along such boundary.

11. Inspection of premises. The Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

12. Improvements. The Lessee will not erect or place on said premises any building or structure including fences and walls, nor make any additions or structural alterations to any buildings thereon, except in accordance with plans and specifications including a detailed plot plan, which shall be prepared by a licensed architect if so required by Lessor, first submitted by Lessee and approved in writing by Lessor, and will landscape said premises suitably for the neighborhood, and will, unless the same is already built, at his own expense, within the first twelve months of said term construct and complete on the demised land, if a residence lot, a single-family dwelling.

13. Repairs to improvements. The Lessee shall, at Lessee's own expense, from time to time and at all times during said term, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted, and maintain and keep said premises and all adjacent land between any street boundary of said premises and the established curb or street line in a neat and attractive condition.

14. Transfer, etc. The Lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the Lessor, or agree to so transfer or otherwise hold Lessee's interest in the demised premises. Pursuant to section 208(5) of the Act, such interest shall not, except in pursuance of such transfer to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the Lessor, or for any indebtedness due the Lessor or for taxes, or for any other indebtedness the payment of which has been assured by the Lessor, including loans from governmental agencies where such loans have been approved by the Lessor, be subject to attachment, levy, or sale upon court process.

15. Mortgage or pledge of interest. Notwithstanding paragraph No. 14 above, the Lessee, with the consent and approval of the Hawaiian Homes Commission, may mortgage or pledge the Lessee's interest in the leasehold to a recognized lending institution authorized to do business in the State of Hawaii or elsewhere in the United States for such uses and purposes, subject to such terms, conditions and restrictions as the Act may provide. Unless otherwise provided in the Act, a loan secured by a

mortgage on a homestead leasehold must be insured or guaranteed by, and in accordance with established regulations of the Federal Housing Administration or other federal, state or other agencies authorized to insure or guarantee loans to homestead lessees. Such mortgages, to be effective, must be consented to and approved by the Hawaiian Homes Commission and recorded with the Lessor.

16. Sublet. The Lessee shall not sublet the Lessee's interest in the whole or any part of the demised premises or improvements thereon nor part with the possession or control thereof.

17. Cancellation, forfeiture. This lease is subject to the continuing condition that if the Lessee shall fail to pay said rent when the same shall become due, or fail in any other respect faithfully to observe or perform any condition or covenant in this lease contained and on the Lessee's part to be observed or performed, or fail to observe or perform the conditions and obligations imposed upon said Lessee by the terms of the Act to which this lease has been made expressly subject, the Lessor may declare the interest of the Lessee in the lands demised hereunder and all improvements thereon to be forfeited and this lease in respect thereto cancelled, and shall thereupon order said lands to be vacated within a reasonable time.

18. Surrender. Upon the expiration of the term hereby demised or sooner termination as in this lease provided, the Lessee will peaceably and quietly leave and surrender and deliver to the Lessor possession of the demised premises together with all improvements erected thereon, in good repair, order and condition, reasonable wear and tear excepted.

IN ADDITION TO THE FOREGOING GENERAL TERMS, COVENANTS AND CONDITIONS, THE SPECIAL TERMS, COVENANTS AND CONDITIONS UNDER WHICH THE LEASE IS ISSUED ARE AS FOLLOWS: (APPLICABLE PROVISIONS ARE NOTED BY A CHECK MARK OR "X" IN THE BOX PRECEDING THE APPROPRIATE PARAGRAPH OR PARAGRAPHS.)

☐ *19. Residence Lot. The Lessee shall occupy and commence to use the residence lot as Lessee's home within one year of the date of this lease, and shall thereafter continue to occupy and use said lands on Lessee's own behalf.*

☐ *20. Agricultural Lot. a. The Lessee shall devote the agricultural lot to agricultural use, and shall thereafter, for at least such part of each year as the Lessor shall by regulation prescribe, so occupy and use said lands on Lessee's own behalf.*

b. The Lessee shall at all times during the period of this lease, practice good husbandry with respect to utilizing the land within the scope of activity permitted hereunder and shall, at Lessee's own cost and expense, correct all failures and make good all defects of which notice shall be given in writing within a reasonable time of the giving thereof. For the purpose of this subsection, the term "practice of good husbandry" shall, without being restricted thereto, include the prevention or elimination of waste, employment of soil conservation practices, crop rotation, fertilization with organic and inorganic fertilizers, the erection of suitable windbreaks either by plantings or otherwise, and the adoption and employment, should the Lessor deem advisable and so require, of a conservation farm or ranch plan for such premises prepared by the United States Soil Conservation Service.

c. The primary purpose of the Act being the successful rehabilitation of native Hawaiians under the guidance and tutelage of the Lessor, it is deemed necessary and in furtherance of said Act and the purpose thereof that the Lessor retain, and it does hereby so retain, the right to approve in advance any proposed agreement between the Lessee and another relating in any way to the use of the agricultural lot.

☐ *21. Pastoral Lot. a. The Lessee shall fence and thereafter commence to use the pastoral lot for the pasturing of cattle and other domestic farm animals within one year of the date of this lease, and shall thereafter, for at least such part of each year as the Lessor shall by regulation prescribe, so occupy and use said lands on Lessee's own behalf. The term "pasturing of cattle and other domestic farm animals" shall include the erection of buildings and other improvements germane to the operation of a stock farm. No other use or uses will be permitted except as Lessor, by rule, shall provide.*

b. The Lessee shall at all times during the period of this lease, practice good husbandry with respect to utilizing the land within the scope of activity permitted hereunder and shall, at Lessee's own cost and expense, correct all failures and make good all defects of which notice shall be given in writing within a reasonable time of the giving thereof. For the purpose of this subsection the term "practice of good husbandry" shall, without being restricted thereto, include the prevention or elimination of waste, overgrazing to the detriment of the whole or any portion of the demised premises, suffering the premises or any portion thereof *to become unduly eroded without reasonable efforts being taken to correct the same, and suffering any material increase in noxious weed coverage on said premises or on any portion thereof and the adoption and employment, should the Lessor deem advisable and so require, of a conservation ranch plan for such premises prepared by United States Soil Conservation Service.*

c. The primary purpose of the Act being the successful rehabilitation of native Hawaiians under the guidance and tutelage of the Lessor, it is deemed necessary and in furtherance of said Act and the purpose thereof that the Lessor retain, and it does hereby so retain, the right to approve in advance any proposed agreement between the Lessee and another relating in any way to the use of said pastoral lot.

IT IS HEREBY FURTHER MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

22. Right to Enter. The Lessor shall have the right to itself and to the agents and representatives of the county in which said demised premises are situated, to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee's use and enjoyment of the premises.

23. Acceptance of Rent Not a Waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

24. Extension of Time. Notwithstanding any provision contained herein to the contrary, wherever applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

25. Fire and Extended Coverage. The Lessee will at Lessee's own expense at all times during said term keep all buildings now or hereafter erected on the demised land insured against loss or damage by fire with extended coverage in a responsible insurance company authorized to do business in Hawaii, in an amount as near as practicable to the replacement cost thereof, in the joint names of Lessor, Lessee and mortgagee (if any) as their interests may appear, payable in case of loss to the mortgagee (if any) or in the absence of any mortgage to Lessor and Lessee as their interests may appear, and will pay all premiums thereon when due and from time to time, on request therefor, deposit with Lessor a true copy or certificate of such current insurance policy, and any money derived therefrom in case of loss shall be held in trust in Hawaii and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged or such modified plan as shall be previously approved in writing by Lessor. The Lessee shall, upon request and reasonable notice thereof by Lessor, at Lessee's own expense, certify by an appraiser the appraisal value of said buildings and improvements on the demised premises.

26. Indemnity. The Lessee will indemnify, defend and hold the Lessor harmless (1) from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or omission of the Lessee, or any nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, and (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

27. Costs of litigation. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all atorney fees, costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all attorney fees, costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rent, taxes and all other charges.

28. Quiet Enjoyment. Upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through and under it.

29. Acceptance of terms, covenants and conditions. The execution of this lease by the Lessee constitutes an acceptance by Lessee of all of the general and special terms, covenants and conditions hereinabove set forth and a binding agreement by Lessee that Lessee shall fully and faithfully observe and perform each and every one of such terms, covenants and conditions.

30. Definitions. The term "premises" when it appears herein includes (except where such meaning would be repugnant to the context) the lands hereby demised and all buildings and improvements whenever erected or wherever placed thereon; the term "Lessor" shall include the Department of Hawaiian Home Lands and its successors in interest; the term "Lessee" shall include the Lessee above named, his or her successors in interest as provided in section 209 of the Act, and permitted assigns; the singular shall include the plural and vice versa, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed this .... *day of* .... *, 19* ....

....

Lessee

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

By ....
Chairman, Hawaiian Homes Commission

APPROVED FOR AWARD ON:

....

APPROVED AS TO FORM AND LEGALITY:

....

Deputy Attorney General
State of Hawaii

Dated: ....

STATE OF HAWAII)
) *SS.*
County of ....)

On this ....*day of*.. *, A.D. 19* .... *, before me personally appeared* ....*to me known to be the person described in and who executed the foregoing instrument and acknowledged that* .... *executed the same as* ....*free act and deed.*

....

Notary Public, State of Hawaii

My commission expires: ....

ALEXANDER & KARSHMER
ATTORNEYS AT LAW
(A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION)
1900 ADDISON STREET, SUITE 200
BERKELEY, CALIFORNIA 94704
(415) 841-5056
TELECOPIER: (415) 841-6167

BARBARA E. KARSHMER (CA)*
PAUL ALEXANDER (D.C.)
GEORGE FORMAN (CA)
MARGARET B. CROW (CA)
*A PROFESSIONAL CORPORATION

111 MASSACHUSETTS AVE., N.W.
SUITE 800
WASHINGTON, D.C. 20001
(202) 371-1553

April 20, 1990

Honorable J. Bennett Johnston,
Chairman
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Johnston;

This letter responds to your follow-up questions relative to your Committee's hearing on S.J. Res. 154; S.J. Res. 154 would provide the consent of the United States to six amendments enacted by the legislature of the state of Hawaii to the Hawaaian Homes Commission Act. I appeared as witness on behalf of Thomas K. Kaulukukui, Sr., Chairman of the Office of Hawaiian Affairs.

Many of the follow-up questions relate to Act 84 of the 1986 Legislative Session. Act 84 allows the HHC to develop lands for homesteading and income generating purposes by contract and agreements with private developers. As you are aware one of the significant problems with the Homesteading program since its inception in 1921 has been the lack of economic resources or funding to implement the program. Unless and until an adequate funding base is created, HHC has to in large part rely on utilizing a portion of the land trust for general leasing or income generation. It is important to conceptually separate general leasing from homestead leasing. Most of the questions concerning Act 84 pertain to general leasing matters and raise issues that would be fundamental concerns if they were applied to homestead leases. Given the apparent necessity for general leases to generate income to support homestead leases, economic factors need to be taken into account in the program. Much of the practical day-to-day implementation experience with Act 84 resides with the Hawaiian Homes Commission who we understand is responding to the same set of questions.

OHA's testimony noted concerns with Act 75. I think the record reflects that although alienation of leases is highly unlikely, such alienation is not technically prohibited. I would be happy to assist in any process that you determine appropriate to work out any necessary refinements to Act 75 in order secure passage of S.J. Res. 154.

Sincerely yours

Paul Alexander

cc. Thomas K. Kaulukukui, Sr., Chairman